IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

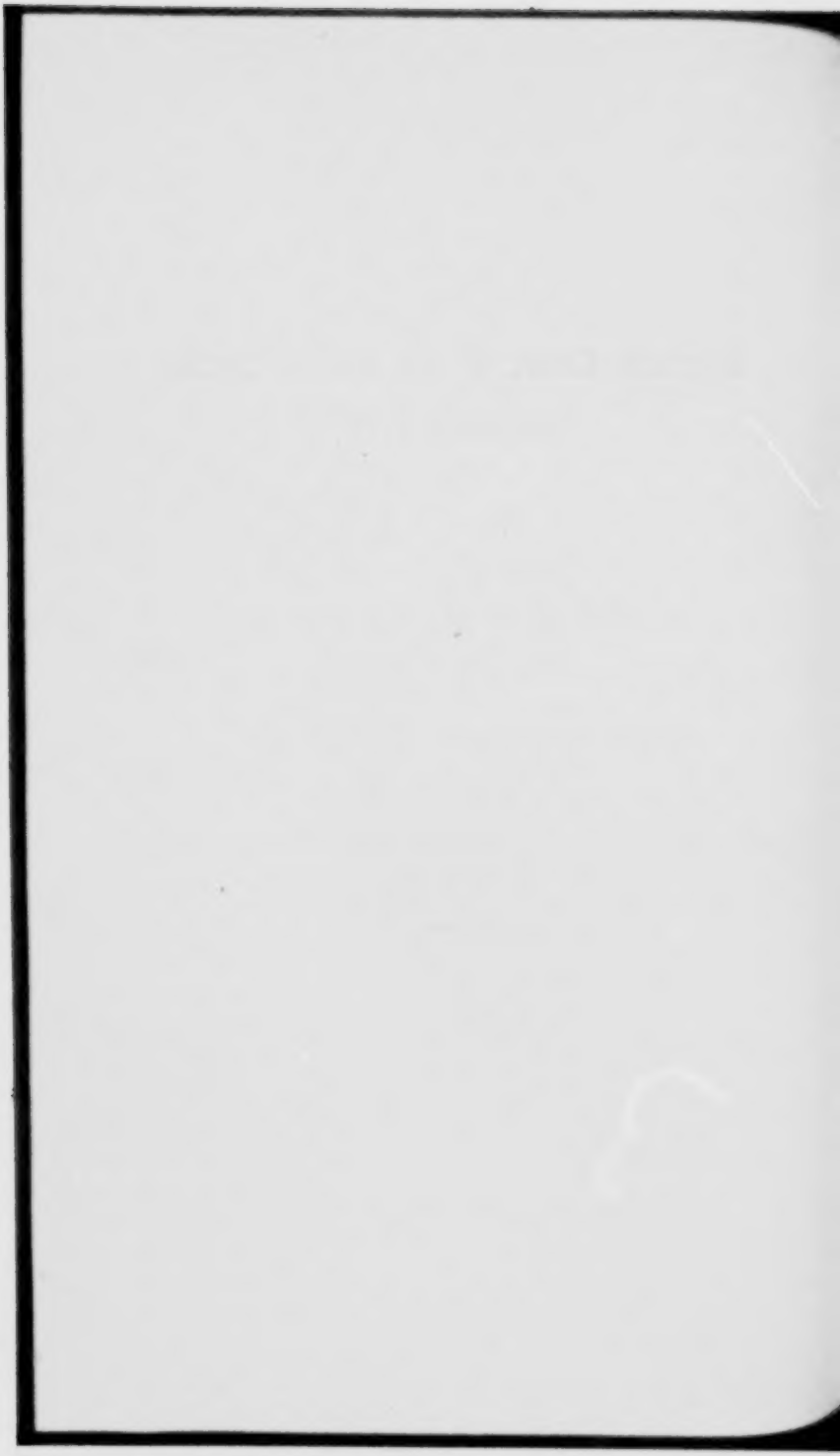
No.

CLAYTON MARK & COMPANY, ET AL.,
Petitioners,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.



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For the Seventh Circuit

No. 8642

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vs.

FEDERAL TRADE COMMISSION,

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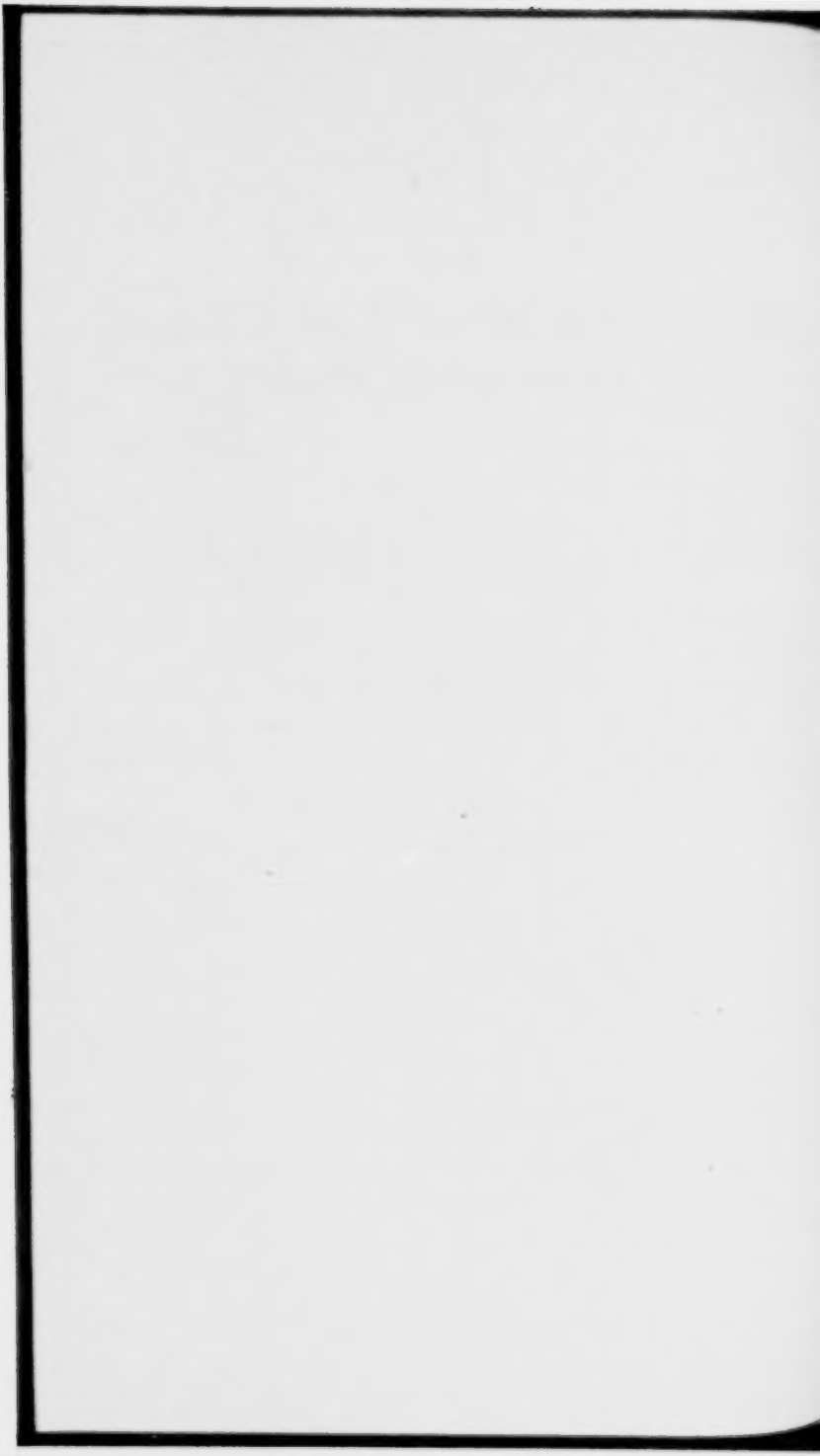

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Trial Examiner Norwood: Hearing come to order.

Pursuant to adjournment on yesterday, the hearing in Docket No. 4452 is reconvened in Room 332, Office of the Federal Trade Commission, Washington, D. C., 9:30 o'clock a. m., December 17, 1941.

Please note the appearances.

Call your next witness.

Mr. Stewart: Mr. Blake, Jr., please.

Trial Examiner Norwood: You haven't been sworn?

Mr. Stewart: No, he has not been sworn.

Mr. Blake: No, I haven't, sir.

HERBERT S. BLAKE, JR., was thereupon called as a witness for the Respondents, and, having been first duly sworn, testified as follows:

Trial Examiner Norwood: Give me your full name, sir.

The Witness: Herbert S. Blake, Jr.

Trial Examiner Norwood: Go ahead.

Direct Examination by Mr. Stewart.

Q. Mr. Blake, you are one of the Respondents here?

A. I am.

Q. And where do you live?

3253 A. I live in Glen Ridge, N. J.

Q. Are you a member of the bar?

A. I am.

Q. Of what State?

A. New York State.

Q. When were you admitted to the bar?

A. 1938.

Q. Are you an officer of Organization Service Corporation?

A. I am at the present time.

Q. When were you made such officer?

A. January, 1940.

Q. And what is your title?

A. Executive Vice-President and Assistant Counsel.

Q. What, if anything, did you have to do with the affairs of the Rigid Steel Conduit Association during the pe-

riod of the contract between Rigid Steel Conduit Association and Organization Service Association?

A. Absolutely nothing whatsoever.

Q. When was the first time you met anybody connected with the Rigid Steel Conduit Association?

A. At the hearing in New York in October I met Mr. Hervey Walker, and he was the first member of the Rigid Steel Conduit Association I ever met.

Q. Now, you graduated from law school what year?

A. 1938.

3254 Q. And is that a three-year term?

A. Yes.

Q. During the time you were in law school did you have any connection with Organization Service Corporation?

A. I did.

Q. What did you do?

A. Purely clerical work. It was really divided in two portions, the type of work which I did. One was to work under Mr. Weiss in general statistics, although among those statistics I never had anything to do with the statistics of rigid steel conduit. The other was to keep abreast of legislation and various cases coming out of the Supreme Court, digest them for my father.

Q. Well, was that full time or part time work?

A. Part time.

Mr. Stewart: Cross-examine.

Cross-Examination by Mr. MacIntyre.

Q. Was any of this work that you did in digesting for your father used by him in advising members of the Rigid Steel Conduit Association?

A. I do not know, sir.

Q. You don't know to what use he put it?

A. No, because we have a number of associations which are managed by Organization Service Corporation,

3255 and we were in the habit of sending out general mailing bulletins. They might or might not have been sent to Rigid Steel Conduit Association.

Q. You knew at the time that he was advising Rigid Steel Conduit Association?

A. Yes, I did.

Q. Just what sort of a division did Mr. Weiss make of his work at the time that you were in his office helping him on statistical matters?

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A. What sort of a division?

Q. Yes.

A. Why, Mr. Weiss had general charge of the statistics of all the organizations which were serviced by Organization Service Corporation. He was also—

Q. Including the Rigid Steel Conduit Association?

A. He did not. Mr. Booth gathered the statistics and tabulated them for the Rigid Steel Conduit Association.

Q. Is it your testimony now that Mr. Weiss had nothing to do with the statistical work of the Rigid Steel Conduit Association?

A. He might possibly have used one of the girls in the office to get totals for him after Mr. Booth had tabulated them.

Q. Well, I ask you again what division did he make of his work on statistics in his office?

3256 A. I don't know of any division, other than the work he handed to me as a clerk.

Q. You do know at the time you were working in his office that he did handle some work for the Rigid Steel Conduit Association?

A. I don't know of my own knowledge.

Q. What is the basis of the statement that you just made, that he did run totals for Mr. Booth?

Mr. Stewart: He didn't say that.

A. He might have run totals for Mr. Booth and handed them over to one of the girls in the office. I do not know of my own knowledge.

Q. In other words, you don't know how much work that Mr. Weiss did for the Rigid Steel Conduit Association?

A. No, I don't. I do know from just a matter of record in the office that he served as assistant treasurer of the Association. I also assume—if you want an assumption—I assume that he might possibly have turned over some work to a clerk in the office, if Mr. Booth was rushed in his own work to get totals for him of the statistics for the Rigid Steel Conduit Association, but I don't know that of my own knowledge.

Q. Well, during that period of time you and Mr. Weiss both worked for the best interests of the Organization Service Corporation and its objectives, didn't you?

A. I was always interested in Organization Serv-

3257 ice Corporation.

Q. And its objectives?

A. And its objectives.
Q. And did all you could to attain those objectives?
A. Yes, I did the work which was handed to me.
Mr. MacIntyre: That is all.
Mr. Stewart: That is all.
Trial Examiner Norwood: Thank you.
(Witness excused.)
Mr. Gilpatric: Mr. Holly.
Mr. Holly has been sworn before.

GEORGE F. HOLLY, was thereupon called as a witness for the Respondents, and, having been previously sworn, testified further as follows:

Trial Examiner Norwood: Give me your full name.
The Witness: George F. Holly.
Trial Examiner Norwood: Proceed.

Direct Examination by Mr. Gilpatric.

Q. Mr. Holly, when did you join the organization of the Youngstown Sheet & Tube Company?
A. In 1911—fall of 1911.
Q. Prior to that time had you been engaged in the conduit business in any way?
3258 A. I was salesmanager for the Manhattan Electrical Supply Company of Chicago.
Q. Did that company handle conduit?
A. We did handle conduit; all conduit and general electrical supplies for building.
Q. When did Youngstown start in the conduit business?
A. They purchased the Western Conduit Manufacturing Company in 1911, and that is when they made the arrangement with me to come with them to look after it. They purchased the Western Conduit Company, which was a small little plant, at Harvey, Ill.
Q. Was that plant operated by the Western Conduit Company after Youngstown acquired it?
A. Yes, it was, for quite some years. Just how long I don't know. Quite some years, as a subsidiary of the Sheet & Tube Company.
Q. What ultimately happened to the Western Conduit Company?

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A. That was finally dissolved. In 1912 they finally decided they would build a plant in Struthers—I call it Youngstown, but it is right outside of Youngstown; Struthers is the real name of it. We finally took the equipment there and shipped it—

Q. From—

A. From Harvey to Struthers and built a new plant which we now occupy in Struthers, Ohio.

3259 Q. What is the capacity, the present monthly capacity, by tonnage, of the Youngstown plant at Struthers?

A. Today I would say about 4,200 tons a month. Sometimes runs a little less, sometimes a little more.

Q. Did Youngstown ever have a conduit plant at Evanston, Ill.?

A. We purchased the Mark Manufacturing Company at Evanston, Ill.

Q. Did you purchase the company or the plant?

A. Purchased—yes, the plant and their assets, the whole business.

Q. Did you ever operate that plant?

A. Yes, we have. I think it was in 1923 when we purchased that company and operated the plant, and we sold it to the Clayton Mark Company. I think we sold that in '38. I think those are the dates.

Q. Is Youngstown presently operating any other conduit manufacturing facilities besides its plant at Struthers?

A. We make some conduit at Indiana Harbor at Chicago.

Q. What is the monthly capacity of the conduit manufacturing facilities at Indiana Harbor?

A. We don't—running, I would say, about 200 tons or so.

Q. Of all types of conduit?

A. That is the hot galvanized, in the larger sizes.

Q. But you are operating that plant today?

3260 A. Yes, we are operating that now.

Q. Mr. Holly, tell us, if you know, how long that Youngstown has been quoting delivered prices on conduit on a Pittsburgh base?

A. Well, when we—when we took—when we went in to build our plant in Struthers in 1912 and when we got started there, I think we used the Pittsburgh base at that time. Probably got through in 1912, probably started to

operate in—some time in '13. That is as far as I remember. It takes a long time to build a plant, but I think it was some time in '13.

(A document was thereupon marked for identification "Respondents' Exhibit No. 177.")

Q. Mr. Holly, I show you Respondents' Exhibit 177 and ask you to tell me what that is, if you can.

A. That is our No. 1 conduit card of the Western Conduit Company, subsidiary to the Youngstown Sheet, which we put out at that time after we got started, after we finished building the plant at Struthers.

Q. Is that the first—

A. That is the first card, No. 1. That is the first card.

Mr. Gilpatric: I offer that in evidence.

Trial Examiner Norwood: What is the date of that?

Mr. Gilpatric: Dated August 1, 1913.

Mr. MacIntyre: Objected to as immaterial.

Trial Examiner Norwood: Objection overruled.

3261 Received as marked.

RESPONDENTS' EXHIBIT NO. 177, was offered and received in evidence.

Mr. Gilpatric: Mr. Examiner, may it be understood that we may substitute photostatic copies for the originals?

Trial Examiner Norwood: I think that is agreeable.

Mr. MacIntyre: If that is done, I suggest at this time that cards of that nature be marked "A" and "B," which would permit photostating with the Reporter's number on both sides.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: So that the entire card may continue in evidence in photostatic form instead of a single side.

Trial Examiner Norwood: Make that 177-A and B.

(The document heretofore received in evidence as Respondents' Exhibit No. 177," was re-marked as "Respondents' Exhibit No. 177-A and 177-B.")

By Mr. Gilpatric:

Q. To your knowledge, Mr. Holly, was the adoption by Youngstown of the basing-point system or method, or the continued use of such system or method, the result of any agreement or understanding between Youngstown and any other Respondent in this case?

A. No, we had no understanding with anybody.

3262 We just—when we finished building the plant we

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just followed through with the price cards that were effective at that time. The basing point was effective at that time.

Q. Have you, or, so far as you know, anyone else on behalf of Youngstown, ever felt any sense of obligation towards any other company, including any of these Respondents, to use the basing-point system of quoting prices?

A. Not that I know of, sir.

Q. When, if you recall, did Youngstown start issuing price cards quoting prices on an Evanston base?

A. I thought it was some time in 1923. I think it was our card in '23, I believe.

Mr. Gilpatric: Mark these, both sides.

(The documents were thereupon marked for identification "Respondents' Exhibits Nos. 178-A and 178-B, and 179-A and 179-B.")

By Mr. Gilpatric:

Q. I show you, Mr. Holly, Respondents' Exhibits 178-A and B and 179-A and B, for identification, and ask you to tell us what they are.

A. They are conduit cards put out by our company. Fifty-seven shows the Pittsburgh base on April 20, '23, and 58, October 27, '24, shows the Pittsburgh and Evanston base. That is when we first put out the Evanston base.

Mr. MacIntyre: October what?

3263 The Witness: October 27, '24.

Mr. Gilpatric: I offer in evidence Respondents' Exhibits 178-A and B and 179-A and B. (Handing documents to Mr. MacIntyre.)

Mr. MacIntyre: These two documents are objected to as immaterial.

Trial Examiner Norwood: Objection overruled. Received as marked.

RESPONDENTS' EXHIBITS NOS. 178-A and 178-B, and 179-A and 179-B, were offered and received in evidence.

By Mr. Gilpatric:

Q. Mr. Holly, at the time Youngstown put out its conduit card No. 58, Respondents' Exhibit 179-A and B, to your knowledge was any other conduit manufacturer quoting conduit prices on an Evanston base?

A. Not that I know of.

Q. Will you explain to us the circumstances which led to Youngstown quoting prices on an Evanston base, card 581

A. As I remember, way back, Mr. Gilpatric, I think there was some decision of the courts of some kind where the Steel Corporation put in a Gary base on steel pipe, and about that time our people were considering what to do with our Evanston plant, and I think there was a $4 differential on Chicago and Pittsburgh, and our card 3264 —between Chicago—between Indiana Harbor and Pittsburgh.

Q. On what product?

A. On pipe. We finally established a $4 differential, making an Evanston base, which brought up the price two points or $4 a ton higher than the Pittsburgh price.

Q. How long did Youngstown quote conduit prices on an Evanston base?

A. We continued on an Evanston base for some time until we discovered Clayton Mark & Company had gone back into the business. I think it was in '24. They established a plant in the City of Chicago, and naturally they were selling the trade, same trade probably that we were. They finally—they started to sell on a Chicago base.

Q. When did you find out that Clayton Mark & Company were selling on a Chicago base?

A. I believe from the records I have that it was about '24, some time in '24, when they were selling on a Chicago base.

Q. When did you find that out? When did you learn of that fact, if you recall?

A. I thought it was during that time.

Q. What, if anything, did you do about that?

A. Well, of course, when we shipped from Evanston into Chicago we were charging at that time 5 cents a hundred or a dollar a ton between Evanston and Chicago, because we were outside the switching district of 3265 Chicago. That meant we were charging a dollar a ton to bring it into Chicago, while our jobbers told us that they could buy pipe right in the City of Chicago without that dollar a ton charge. Then the only thing we could do after that is bring pipe down—what we really did do, we loaded cars in Evanston for our various customers and brought it up to the Grand Avenue team track in the loop in Chicago, which practically gave us the same

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competition that they could get—the pipe that they could get from Clayton Mark & Company.

Q. Did Youngstown ever quote conduit prices on a Chicago base?

A. Yes, some time—quite some time after that, because we did not change to Chicago base at the time, because this is only effective in the loop district in Chicago, and the rates from Evanston were about the same as the other.

Mr. Gilpatric: Read the last answer, please.

(Answer read.)

By Mr. Gilpatric:

Q. What do you mean by that?

A. For shipments outside of the City of Chicago. For instance, it didn't make any difference if you wanted to ship outside points of the City of Chicago. Evanston and Chicago base would not make any difference. The only place Chicago was effective was right in the Chicago district, right in the loop district.

3266 Q. Mr. Holly, do you remember the date when you first started quoting conduit prices on a Chicago base?

A. You mean actually put out a card? Actually published—you mean when we actually published a card?

Q. No; when you actually quoted a price.

A. I thought it was some time in '24.

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 180, 181, and 182.")

By Mr. Gilpatric:

Q. Mr. Holly, I show you Respondents' Exhibits, for identification, 180, 181, and 182, and ask you if they refresh your recollection as to the exact date on which Youngstown started quoting prices on conduit on a Chicago base.

A. This is '24. Probably '34. That is because this—this was the time we filed—this brings it to my mind now—

Q. By "this," you refer to Respondents' Exhibit 180.

A. This telegram brings it to my mind. I tell you what it was: During N.R.A. we were compelled to file our prices with Hodkinson, supervisory agency. After we filed our prices with Mr. Hodkinson—this comes to my mind now—we discovered that the Clayton Mark Company were shipping on a Chicago base. So in order to be right with the Government, with the N.R.A., we wired Mr. Hodkinson that we find this is going on and to correct our prices

3267 to Chicago and Evanston base. That was '34, not '24.

Q. Will you explain what Commission's Exhibit 182, for identification is?

A. This was a letter dated December 27, '34, sent out by our office to all district offices advising them of the Chicago base.

Mr. Gilpatric: I offer in evidence Respondents' Exhibits, for identification, 180, 181, and 182 (handing to Mr. MacIntyre).

Mr. MacIntyre: No objection.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBITS NOS. 180, 181, and 182, were offered and received in evidence.

By Mr. Gilpatric:

Q. To your knowledge, Mr. Holly, was the action of Youngstown when it started to quote prices first on an Evanston base and later on a Chicago base the result of any understanding or agreement with Clayton Mark & Company or with any other Respondent in this case?

A. Absolutely none.

Q. Does Youngstown feel free to quote prices on any other basis at any time, or to discontinue altogether the use of the basing-point system?

A. Absolutely.

3268 Q. Who in Youngstown's conduit sales organization determines when Youngstown issue a new price card?

A. Why, I usually go over the proposition pretty well myself and look the thing over pretty carefully. Then finally I consult with our executives, particularly Mr. W. E. Watson, who is vice-president in charge of sales. We talk the thing over pretty carefully as to what policy we will follow out.

Q. Counsel for the Commission has put in evidence in this case, Mr. Youngstown's price cards of the series 69 through 84, with certain omissions, such as cards 73, 75, and 77. As manager of conduit sales, are you familiar with the circumstances that led to the issuance of these price cards?

A. Well, I know that we followed through with those cards. I know something about them. We discuss each and every card that we put out.

Q. I wish you would go through that series of cards, referring to any records that you need to, and after stating

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the number of each card and the date of each card that Youngstown issued in that series state the change in price of each type of conduit effected by the card, and, if you recall, the reasons for each change.

A. Well, I—

Q. Have you got the price cards?

A. I got what I could find in my office, and I made a pencil memorandum, is all I have, that I pinned to the
3269 cards that I brought here.

Q. Well, please answer the question by referring when necessary to your price cards that you have with you and to your memorandum.

A. Can I get the cards?

Q. Yes.

Mr. MacIntyre: Off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. MacIntyre: Let us go back on the record.

If the witness is to refer to any memorandum which is not a duplicate of anything that is in evidence, then I suggest that such memoranda be marked for identification as Respondents' exhibits.

Trial Examiner Norwood: That is reasonable.

Mr. MacIntyre: So that the record may be clear. And if any duplicate of memorandum which is in evidence is referred to by the witness, then the reference to it should be made so clear as to have the record to show what part of the record it is a duplicate of. For example, if he should refer to any price card, he should give the number of it each time and which page of the price card that he is referring to.

Mr. Gilpatric: In accordance with Mr. MacIntyre's request, I am asking to have these records marked.

Trial Examiner Norwood: Yes.

3270 (The documents referred to were marked for identification "Respondents' Exhibits Nos. 183-A to 183-P.")

Trial Examiner Norwood: Proceed.

By Mr. Gilpatric:

Q. Mr. Holly, will you start with card 69, giving us the number and the date of issuance and the change in price?

A. This is Youngstown card 69, dated July 17, 1933. This is my own memorandum, after looking at the card: "Resulting in a $9"—

Q. You just state, Mr. Holly, the best of your recollection what the change was. If you can't recall without looking at the memorandum, look at the memorandum, but don't read it.

Mr. MacIntyre: Now, before the witness refers to any memo, I would like to ask him a question about the preparation of the memos. It is not clear that the evidence that he is now attempting to give in the form of testimony based upon such memos would be competent, because there is no competency at all shown as to the memos. I would like to ask him a question about them.

Mr. Gilpatric: I will ask him the question. I have not offered those yet.

Mr. MacIntyre: Well, it does not matter.

Trial Examiner Norwood: Find out whether it is such paper as he would be justified in using on the stand to
3271 refresh his memory.

Mr. MacIntyre: May I ask the question?

Trial Examiner Norwood: No. I will let Mr. Gilpatric ask the question.

By Mr. Gilpatric:

Q. Mr. Holly, did you at my instance prepare memoranda with respect to each of the price cards put out by Youngstown in order to prepare you for your examination today?

A. I dug these out of my files, and I thought the question would come up as to what the difference in the cards was, and as near as I could—I may not have everything here—as near as I could remember what happened, what that card was—I don't know that it is a hundred percent what happened, but as near as I can remember it is what happened, and I made a pencil memorandum of it.

Q. After consulting your records and—

A. With anything I had in the office. I didn't have all the information I ordinarily would have.

Trial Examiner Norwood: It was all made by yourself?

The Witness: Yes, sir; I made those memorandums myself.

By Mr. Gilpatric:

Q. Is it necessary for you to refer to those memoranda in order to give the answer to the question I have asked you?

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3272 A. It would, because I can't remember those changes. It was so fast and so many made that I couldn't remember definitely what those changes were without looking at that memorandum.

Mr. MacIntyre: Yes. I would like to ask an additional question or two on these.

Trial Examiner Norwood: All right.

Examination on Voir Dire by Mr. MacIntyre.

Q. Mr. Holly, referring to these exhibits, for identification, Respondents' Exhibits 183-A to P, upon what did you base them when you prepared them? Where did you get the information that you—

A. From things that we had in our offices, change of the price on merchant pipe; to see if the conduit price changed about the time pipe changed, or something of that kind, and to check back what the changes were.

Q. Well, how long ago did you prepare these memorandums?

A. About a few weeks ago.

Q. At the request of your counsel?

A. No. I took those out myself.

Q. Well—

A. I thought they would ask me what—they would ask me what—what these cards were, and I can't remember what those changes were, so I made a memorandum.

3273 It may not be properly made out.

Q. And that information is based upon information that you secured some three or four weeks ago from other records in your office?

A. From our offices.

Q. And from conversations you had with others?

A. No. From our own offices and records in our own offices on pipe.

Q. But I mean, and some conversations with others in your office?

A. Yes.

Q. And from records that you found in your office at that time?

A. That is right.

Q. Did you produce or do you have with you the records that you used as a basis for the drafting of these memorandums?

A. No.
Q. You didn't bring them with you?
A. No.

Mr. MacIntyre: I object to the witness referring to memos that he prepared three weeks ago from other information in his office for the purpose of giving testimony here this morning. Obviously I cannot cross-examine him by simply using these memos if they are in turn based upon something else which is not here and of which he
3274 does not have a recollection.

Mr. Gilpatric: Mr. Examiner,—

Trial Examiner Norwood: Is the data from which this is taken available to the Commission's examiners?

Mr. Gilpatric: Certainly it is available. The Commission's examiners have been out there, have been out there in Youngstown for a good period of time, but I want to make this point: When the shoe was on the other foot here, when Mr. Williams and Mr. Carmichael were on the stand we tried to get the underlying data and we were unsuccessful. This witness has been with the Youngstown Company for 30 years. He doesn't remember all those things. I am simply asking him to refresh his recollection where necessary by referring to cards which the Commission has put in. I think it is perfectly proper. If it turns out on cross-examination that Mr. MacIntyre feels he isn't getting what he is entitled to, he can move to strike the testimony at that time.

Trial Examiner Norwood: I think I will permit him to use these with the understanding that the data from which it was taken are open to the Commission's investigators and so that they may be verified, and if I find that access to documents was refused, I will entertain a motion to strike the testimony.

Mr. Gilpatric: Without question, Your Honor, those records will be open.

3275 Trial Examiner Norwood: So, with that understanding, I overrule the objection.

Mr. MacIntyre: Will they be here before the cross-examination is completed so that I may use them if I need to for cross-examination of the witness?

Mr. Gilpatric: Let us cross that bridge when we come to it.

Trial Examiner Norwood: Yes. If it appears that

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that is necessary, I will make a condition that this witness is subject to recall for cross-examination.

Go ahead.

Mr. Gilpatric: All right.

Direct Examination (Continued) by Mr. Gilpatric.

Q. Mr. Holly, now, you tell us about card 69. Give the date and the number and the change.

A. Youngstown card 69, dated July 17, '33, resulting in a $9 per ton increase due to similar advance in merchant steel pipe on July 1, 1933.

Q. Now, turn to card 70. What was the date of card 70?

A. Card 70 was dated July 20, 1934.

Q. What change did that make?

A. Resulting in a $9 per ton increase which followed a seven—

Q. On both types of conduit?

3276 A. Which followed a $7 a ton increase in steel in April, '34, steel pipe.

Mr. MacIntyre: What is the date of the card?

The Witness: The card was 70, dated July 20, '34.

By Mr. Gilpatric:

Q. All right. Look at card 71 and tell us, if you can,—

A. Seventy-one was dated—Youngstown's card, dated January 16, 1936. There was no change in the price. There was just some minor changes in the card.

Q. All right. Now, turn to card 72.

A. Card 72, Youngstown's card, was dated March 17, 1936.

Q. And what was the change in the price?

A. That was a 27 percent decrease.

Q. On both types of conduit?

A. All the way through on conduit, yes.

Q. All right. Now, give us your recollection of the circumstances which led to the issuance by Youngstown of that card.

A. Well, at that time we found all sorts of cut prices going on; we found that 5 percent, we found two 5's, we found three 5's beyond the cards. Of course, somebody would be cutting it 5 percent, somebody two 5's, sometimes three 5's. We talked of this at home. They said,

"George, what is the price of conduit?" I said, "I don't know. Everywhere we go somebody cuts the price."
3277 They said, "Why don't you find out what is the lowest price actually going?"

We found five 5's, what we figured was about 25 percent, so we talked it over, and my executives, after discussing the thing, we cut the thing about 27 percent. In other words, in order to get away from quoting these 5's, we put it in our card and quit quoting these 5's. That is what caused that card to go out.

Q. Were there any other circumstances, to your knowledge?

A. Well, I made a memorandum on this, which I have right this, which I have right here. I made here that according to—

Q. After refreshing your recollection from that, do you recall any other circumstances which related to the issuance of this card by Youngstown?

A. What is that?

Trial Examiner Norwood: Read it.

(Question read.)

A. Well, we found that that was happening. We find several other companies put out a 25 percent or more. We just cut below all of them, cut below the whole business.

Q. Was there any change in the price of steel pipe at or about the issuance of card 72?

A. Yes, there was a change, a substantial reduction, in pipe on March 6, 1936, prior to this change, which no doubt helped bring these lower prices out, is what I
3278 thought. That was on March 6, 1936, steel pipe.

Q. All right.

Now, turn to card 73, if you have any record of the Youngstown issue.

A. We did not issue card 73.

Q. All right. Take card 74.

A. Card 74, Youngstown's card, was dated December 4, 1936. That card represented an advance in price of about $10 per ton.

Q. What is your recollection of the reasons for the issuance by Youngstown of card 74?

A. Well, we found that this card was issued by our competitors. My records show, from what I could find at home, two competitors put out the card and we followed that card.

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Q. All right. Take card 75.
A. We did not issue card 75.
Q. Card 76.
A. Card 76 is Youngstown's card, dated March 17, 1937.
Q. What change in the price of conduit did that card bring about?
A. That was an advance in the price of pipe in the early part of March, but that was—the increase was reflecting the change that was made on 72, trying to get some of the—some of the advance back.
3279 Q. Some of the advance back?
A. Some of the decline — the decline that was made.
Q. What was the change in the price of conduit brought about by that card? I don't think you told us.
A. Well, I—as near as I could find is that Central Tube initiated it, Central Tube, on March 8.
Q. You are not answering my question.
Mr. Gilpatric: Read the question, please.
(Question read.)
A. Well, raw material was advancing—
Q. The change in the price of conduit that the card effected. Did it increase or decrease the price of conduit?
A. Increase by approximately 25 percent.
Q. All right. Now, give us the information with regard to card 77 of Youngstown.
A. We did not issue 77.
Q. Take 78.
A. 78 was dated July 29, 1938. That was—
Q. What change—
A. That was reflecting a reduction of approximately $6 a ton on galvanized.
Q. Do you recall the reason why Youngstown issued that card?
A. Yes. There were some increases in—in the cost of materials which changed that price.
3280 Q. Card 78?
A. Card 78, we followed a—reflecting a reduction of $6 a ton. Did I say increase? Reduction of $6 a ton. That was put out by the—I remember that now; the National Metal Molding Company put out a reduction of $6 a ton on galvanized material, and we followed that card.
Q. You testified a minute or so ago that that card was

due to increased costs. Do you want to correct that statement?

A. Yes. After looking it over, I see what it was. It was a reduction.

Q. Do you recall, Mr. Holly, or do your memoranda recall to you, whether or not there was any reduction in the price of pipe in July, 1938?

A. I have nothing that—that I have here in 1938.

Q. All right. Take card 79.

A. Card 79 is Youngstown's card, dated November 16, 1938.

Q. What was the change effected in the price of conduit by that card?

A. That was—we—I have got that marked here to meet special concessions being made—

Mr. Gilpatric: Just a minute.

Please read the question.

Trial Examiner Norwood: Read the question.

(Question read.)

A. I would have to compare all cards. I have got it marked here to meet concessions made by competi-
3281 tors beyond card 78.

Q. That was the reason?

A. That was the reason.

Q. I asked you what was the change made by the card. Do your records show?

A. No, I haven't got that.

Q. Was it a reduction or an increase in price?

A. I would say it was a reduction. I am not so sure without going back on all my cards.

Q. Well, look at the last card and see whether it was—

Mr. MacIntyre: I object to taking the time to do that. The cards are in evidence. They show where the one is above the other, without having the witness inform us.

Trial Examiner Norwood: He wants some explanation. He can do it if he can do that in a reasonable time.

By Mr. Gilpatric:

Q. Can you tell that by looking at card 78?

Trial Examiner Norwood: We will take a recess to look that up.

A. Card 78 and card 79; card 79 is a reduction.

Trial Examiner Norwood: Five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

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By Mr. Gilpatric:

Q. Mr. Holly, will you resume with card 80, giv-
3282 ing the date of that card.

A. Card 80 is dated December 21, 1938.

Q. And what was the change in the price of conduit for Youngstown effected by that card?

A. That was an increase in price issued by our competitors, and we followed this card.

Q. All right. Take card 81. Give us the date on which Youngstown issued that card, card 81.

A. Card 81 is dated October 28, 1939.

Q. Is that an increase or decrease.

A. That is a decrease.

Q. Card 81 is a decrease in the price?

A. Decrease of 5 percent on galvanized only. No change in the black.

Trial Examiner Norwood: What was the cause of that?

The Witness: An increase of 5 percent. Did I say decrease? I meant increase of 5 percent.

The cause of that was due to the zinc advance. Zinc was advanced at that time, and only galvanized was increased.

Trial Examiner Norwood: How much of an advance?

The Witness: Five percent. That would be approximately $5 a ton.

Trial Examiner Norwood: And you advanced your price 5 percent?

The Witness: Five percent.

3283 Trial Examiner Norwood: And you say the zinc price advanced 5 percent?

The Witness: I don't know how much the zinc price advanced at that time.

By Mr. Gilpatric:

Q. You haven't any record of what the increase in the price of zinc was?

A. No, I haven't that here. We would have it at home, but I don't have it here.

Q. Take card 82 and give us the date on which Youngstown issued it.

A. 82 is dated March 18, 1940.

Q. Was that a decrease or an increase?

A. That was a decrease on galvanized conduit only.

Q. And do you recall why Youngstown put that card out?

A. Well, our competitor put that out, and we simply had to follow as long as he put that out. One of our competitors put that card out. I have a memorandum here on this card why, in my opinion, it was put out. Somebody may not agree with me, but that was my idea why the decrease was put into effect.

Q. Turn to card 83.

A. 83 was dated November 22, 1940.

Q. Was that an increase or decrease in the price of conduit?

A. That was an advance.

Q. Both types of conduit?

3284 A. Galvanized and enameled.

Q. Do you recall what led to that increase?

A. I—in studying these cards, it was my idea that the cost of labor and zinc increased that card.

Q. That is your recollection?

A. That is my recollection on the card. That is the note I made on it.

Q. On what date was card 84 issued by Youngstown?

A. Card 84 was dated January 24, 1941.

Q. Was that an increase in price of conduit?

A. That is reflecting an advance of about 5 percent.

Q. You mean that the price of conduit was increased 5 percent?

A. Advance of 5 percent.

Q. And what was the cause, if you recall it, for Youngstown Sheet & Tube—

A. My memory here is that a competitor of ours increased his price and we followed that card.

Q. Was there any increase in—

A. There was an advance in pipe, merchant steel pipe, on December 2, 1940, which, no doubt, would be the reason for the competitor putting this card out.

Mr. MacIntyre: Well, I move that that answer be stricken; purely speculation.

Trial Examiner Norwood: Motion allowed as far
3285 as striking everything in the answer beginning with "which, no doubt," and striking the remainder of the answer.

Mr. Robison: Let us have the answer read.

Mr. Gilpatric: Will you read the answer?

Trial Examiner Norwood: Read the answer.

(Answer read.)

By Mr. Gilpatric:

Q. Now, Mr. Holly, what did that increase in pipe price have to do with your decision on the part of Youngstown to put out your card?

A. Well, with us each department is naturally responsible to make profits, and unless I can make profits in the conduit business they are not going to turn this stuff over to me. They are going to let the department sell it that can make a profit.

Q. What stuff?

A. The steel pipe. If the pipe department gets an advance and they sell at an increased price why, they can sell pipe to the trade at an increased price, it ought to be natural that I would follow to get an increase in price, to get my price on conduit.

Q. In what manner, Mr. Holly, do you announce to your distributors the issuance of new price cards by Youngstown?

A. If we are making a change in our card the first thing we do, we telegraph all our offices advising them of
the change, and in that telegram we tell them, as
3286 near as we can, what change we are making, and also
mention the fact that a published card will follow in a few days. We can't always get it out quickly. Sometimes it takes us a few days to get the card through. Then we ask these offices to advise the trade. Then when the card is published, then we mail them to our offices and the trade in general.

Q. Based on your observations and experience in the conduit industry, have you found that buyers of conduit will commonly pay a higher price for Youngstown's conduit than for conduit of like type and size by other manufacturers?

A. I can't get anybody to pay more money for it. We got to sell at a competitive price.

Q. Did you, Mr. Holly, or so, far as you know, anyone else in Youngstown's organization, ever agree with any other manufacturer of conduit in this case to adopt or use uniform price cards?

A. No, sir.

Q. Or to adhere to the prices appearing in your price cards?

A. No, sir. We can do just as we please. Whatever

our people make up their mind at home to do, that is what we will do.

Q. Have you felt free at all times to change your price cards?

A. Absolutely. We can change it any time we like.

3287 Q. Mr. Holly, the counsel for the Commission has put in evidence in this case as Commission's Exhibit 55 some cards showing—put out by Youngstown showing delivered prices for contractors and wholesalers in New York City and in Philadelphia. Will you explain the reasons for Youngstown's practice in putting out this type of card?

A. I remember putting those out. We did that in Philadelphia and New York, particularly because some of the jobbers and some of the contractors wanted us to give them their net delivered price at New York or at Philadelphia, and it was all—the size run, all you had to do was hand them the card, and there was their cost. It was very easy for them to figure their estimates, or whatever they were figuring on, from that price. That was the only reason for it.

Q. Do you ever see copies of price cards put out by other conduit manufacturers?

A. Oh, yes, certainly we do. We have them at home. We get them all the time.

Q. How do you receive such cards?

A. Well, we—it has always been my policy for years to ask our offices—and those instructions are effective today—to pick up anything they can in the way of competitive cards, information, prices, or no matter what it may be, and send it on to Youngstown.

Q. What is your reason for that?

3288 A. So that we will know at all times what competition is doing.

Q. Do you have any agreement or understanding with any of the other conduit manufacturers for furnishing you copies of their price cards?

A. None at all. None at all.

Q. Mr. Holly, counsel for the Commission has introduced into evidence in this case certain freight rate bulletins and certain delivery charge or adder booklets published by Youngstown in connection with its conduit sales. Included in those is the delivery card or adder book put out by Youngstown under date of November 15, 1930. Will you explain why Youngstown put out that delivery charge or adder book at that time?

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A. Well, we figured that out in our own organization to simplify the handling of our billing, and it was very easy with that for even our customers to figure out their prices and the billing and handling of conduit and figuring out our prices.

Q. Had you seen, prior to that time, a similar delivery charge book put out by any other conduit manufacturer?

A. I did. I couldn't tell you who put it out, but I saw a booklet which gave the places where the freight was two or three—two or three cents. We didn't think much of that because what we wanted was the actual rate, and we figured out our own delivery charge book.

3289 Q. Mr. Holly, I show you Commission's Exhibit 80-R, and ask you whether that is the booklet to which you referred in your last answer?

A. That is the—we didn't—yes, that is one, and then there was—that is the one I had in mind, that that gave the key number, and you would have to go back to the freight rate. We figured out that our proposition was much simpler and worked it out for our own use.

Q. To your knowledge, was the adoption of Youngstown's delivery charge booklet of November 15, 1930, the result of any agreement or understanding between Youngstown and any other manufacturer of conduit?

A. None whatever.

(A document was thereupon marked for identification "Respondents' Exhibit No. 184.")

Q. Mr. Holly, I show you Respondents' Exhibit No. 184, for identification, and ask you to tell us what that is.

A. That is a freight bulletin published by our company on that date, December 1, 1930.

Q. Do you know where that copy of the bulletin which I handed you came from?

A. What is that?

Q. Do you know where that copy of the bulletin came from?

A. Yes. That came from all our freight rates, and I got this from our traffic department.

3290 Mr. Gilpatric: I offer in evidence Respondents' Exhibit 184, for identification, without the pencil notations.

Off the record a minute.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. MacIntyre: No objection.

Trial Examiner Norwood: Received as marked, 184, consisting of—

Mr. Gilpatric: Twelve pages.

Trial Examiner Norwood: —12 printed pages.

RESPONDENTS' EXHIBIT NO. 184 was offered and received in evidence.

By Mr. Gilpatric:

Q. Mr. Holly, you mentioned Youngstown's traffic department. How long has Youngstown had a traffic department?

A. It has always had a traffic department—a large traffic department.

Q. Ever since you have been with the company?

A. Oh, ever since I have been there.

Q. What, if anything, does the traffic department of Youngstown have to do in connection with the preparation of and checking of freight rate bulletins issued by Youngstown?

A. When we get a new freight rate bulletin we
3291 send it down to the traffic department to check the rates to see if they are all correct.

Q. Was Respondents' Exhibit 184 prepared by the Youngstown traffic department?

A. This one here? That was prepared by our own department.

Q. Mr. Holly, tell us, if you know, whether Youngstown ever knowingly used a wrong freight rate in connection with the sale of and the quoting of the price of conduit.

A. Knowingly, I don't know. It may have happened, but I don't know offhand.

Q. You did not use a wrong rate knowingly?

A. No. No.

Q. Did you, or, so far as you know, anyone else on behalf of Youngstown ever agree with any of the other manufacturers of conduit to issue freight rate bulletins and delivery charge booklets for the use in quoting prices or in selling conduit?

A. We don't agree with anybody at all. We purchase them, and we can stop any time we want.

Q. State the circumstances in connection with Youngstown changing from the practice of printing its own freight bulletins, as exemplified by Respondents' Exhibit 184.

A. When I talked to the traffic department about that I

said we could buy them already made up, plates and everything is made, and we can purchase them, and they suggested to go ahead and do it. They said, "Don't
3292 bother us. Go ahead and do it, and we will check it for you when the time comes." So we started purchasing them. I think it was the Donley Company in Pittsburgh.

Q. Did you have any other purpose or motive in making that change in practice?

A. None at all.

Q. Have you or, so far as you know, anyone else on behalf of Youngstown, ever felt any sense of obligation to anyone to continue the use of the Donley freight rate bulletins?

A. Not at all.

Q. Or the use of any delivery charge or adder booklet in the sale of conduit?

A. None whatever.

Q. Mr. Holly, has the Youngstown Sheet & Tube Company filed its conduit prices with the Office of Price Administration and Civilian Supply?

A. Yes, sir; we have.

Mr. MacIntyre: I object to the—I did not have time to object to the answer before it was given, but I object to the question and move that it and the answer be stricken. It is irrelevant and immaterial here.

Trial Examiner Norwood: Read the question.

(Question and answer read.)

Mr. Gilpatric: Mr. Examiner, Youngstown Sheet & Tube Company, as well as the other manufacturers Re-
3293 spondents, are charged with maintaining their conduit prices, and I want to show that the Youngstown Company has filed its prices with the Price Administrator in accordance with the steel products price schedule, which I propose to show applies to conduit. I think that is very material in this case in explaining the alleged uniformity in conduit prices from and after the date of this filing and the application of the price schedule.

Mr. MacIntyre has put in evidence, for example, abstracts of bids on conduit as late as August, 1941, which he claims shows the identity or uniformity of bidding. I think that we are entitled to explain, or offer an explanation if we can, for that condition, and this, in my mind, is material as an explanation.

Trial Examiner Norwood: Well, just how will this pa-

per that has recently been filed here with a Government agency,—how will that affect the matter of the investigation here?

Mr. Gilpatric: These price filings were made last May, 1941, prior to the dates of the abstracts of bids which the Commission has offered and claims to show uniformity. The effect of this price schedule, we contend, is to fix a ceiling on the price of conduit. Now, I want to show that that factor is responsible for the uniformity, if there is any, in conduit prices; that the Price Administrator of the Office of Price Administration has fixed a ceiling, which has
3294 the effect of leveling all these prices since the date of it, and since the Commission has put in evidence after the date of the application of this price schedule, I feel I am entitled to show just what Youngstown has done.

Trial Examiner Norwood: In other words, you want to show that that letting which the Commission has shown here was uniform by reason of this action of the Price Administration; is that right?

Mr. Gilpatric: In its application to this Respondent, what this Respondent did under its order, and also, if I may complete my offer, or explanation, the price schedule put out by the Administrator contains references to the basing-point system, the use of which is here in issue, and which I want to include in the record.

Mr. MacIntyre: The offer that has been made by Mr. Gilpatric certainly has no application to any of the issues here. It is true that during the current year there has been in operation the Office of the Price Administrator and that as to some commodities price ceilings have been placed upon prices which the manufacturers of those commodities may charge. There is no showing that any such ceilings applied to the product involved here. In fact, I have been informed long after the issuance of the bulletin which fixed prices on steel products—I have been informed by an official of the Office of Price Administration that that
3295 bulletin on steel products did not apply to rigid steel conduit, and that such determination was made as late as September, 1941; and then, even if it did apply, the mere fact that Respondents filed prices would have no application here because the fixing, even if it had been done, of maximum ceiling prices beyond which these Respondents could not have sold their products would not have excused them from colluding with each other in fixing their prices at the highest ceiling which was fixed by the Government,

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which would be just as illegal to fix and maintain the prices at a uniform level which would be the ceiling price as if no ceiling price had even been fixed. There has been no ceiling, and even if it had, my reasoning as last outlined would apply.

Trial Examiner Norwood: I will hear from counsel.

Mr. Gilpatric: I think that Mr. MacIntyre's statement that the ceiling does not apply is a matter of rebuttal. I contend that it does. And as to the rest of his statement, I consider it to be argument, and not a reason why we should not be permitted to make this showing, if we can.

Trial Examiner Norwood: I think that the only reason why anything like this should go in is that the counsel stated there that there is evidence here of a letting subsequent to the time you filed these prices or had the ceiling set on this product.

Mr. MacIntyre: Now, if Your Honor please, on that
3296 point, it would have no application, because there is an affirmative showing in the record at this time that only this Respondent filed prices with the office of Price Administrator, and I defy the Respondents to show that any one of them except the Youngstown Sheet & Tube Company filed prices with the Office of Price Administrator. Is he attempting to lift himself by his bootstraps here?

Mr. Gilpatric: You hold your defiance until we get through with our case.

Trial Examiner Norwood: Well, I think that he may show that with respect—that is, this evidence is not to be applied to anything but that one letting which has been shown here. In other words, I do not see how it could possibly apply to lettings prior to that time.

Mr. Gilpatric: Oh, I agree with that, Your Honor, but don't forget the complaint here charges us with a continuing conspiracy; we are supposed to be conspiring today.

Trial Examiner Norwood: I will overrule the objection and permit you to show it.

Mr. Gilpatric: It has been pointed out to me that there is more than one letting, more than one public opening after the date of this price schedule.

Trial Examiner Norwood: Yes. Well, this may go to the explanation of that, so far as this Respondent is concerned or any others who may be connected therewith.

3297 Mr. Gilpatric: Mark that.

(A document was thereupon marked for identification "Respondents' Exhibit No. 185.")

By Mr. Gilpatric:

Q. Mr. Holly, I show you Respondents' Exhibit 185, for identification, and ask you to tell us, if you can, what that is (handing document to the witness).

A. This is a letter dated May 2, 1941, addressed to the Office of Price Administration and Civilian Supply, Washington, D. C., by Mr. Watson, our vice-president in charge of sales, in filing our prices with the Administrator. That is a copy of Mr. Watson's letter.

Mr. Gilpatric: Mark that.

(A booklet was thereupon marked for identification "Respondents' Exhibit No. 186.")

By Mr. Gilpatric:

Q. I show you, Mr. Holly, Respondents' Exhibit, for identification, 186, and ask you whether that is the enclosure with Respondents' Exhibit 185, for identification.

A. That is the booklet that I was asked to prepare when the prices were filed.

Q. And is that—

A. That is the book just as we filed it, with all the prices of the Youngstown Sheet & Tube Company, including conduit.

Mr. Gilpatric: I offer in evidence, Mr. Examiner,
3298 Respondents' Exhibits 185 and 186, for identification, and ask whether the attorney for the Commission will stipulate that the conduit price cards and delivery charge booklet included in Respondents' Exhibit 186, for identification, may be treated as the copies of similar duplicate price cards and delivery charge booklets already in evidence, to avoid duplication in the record.

(Discussion off the record.)

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 187, 188, and 189.")

By Mr. Gilpatric:

Q. Mr. Holly, I show you Respondents' Exhibit, for identification, 187 and ask you whether that is the price schedule No. 6 referred to in Respondents' Exhibit, for identification, 185.

A. Yes, that is.

Q. Mr. Holly, on page 2 of Respondents' Exhibit, for identification, 187 there is a reference to the annual statistical report of the American Iron & Steel Institute for

1939. I show you Respondents' Exhibit, for identification, 188, and ask you to tell me what that is.

A. That is the report of the American Iron & Steel Institute for 1939.

Q. I show you Respondents' Exhibit 189, for identification, and ask you whether that is a copy of page 43
3299 of Respondents' Exhibit, for identification, 188?

A. That looks like the same thing to me, a copy of that page.

Mr. Gilpatric: I now add to my previous offer, Mr. Examiner, Respondents' Exhibits, for identification, 187—

Trial Examiner Norwood: How many printed pages are there?

Mr. Gilpatric: Twenty-one printed pages.

—and 189, for identification, subject to the attorney for the Commission conceding that Respondents' Exhibit 189, for identification, is a copy of page 43 of Respondents' Exhibit 188, for identification, the point of my request for stipulating being to avoid putting in evidence this booklet, Respondents' Exhibit 188, for identification.

Mr. MacIntyre: What page in it?

Mr. Gilpatric: Page 43.

I am vouching for the fact that Respondents' Exhibit 189 is a true and correct photostatic copy of the corresponding page in the booklet.

Mr. MacIntyre: I would like to ask the witness a question about one or two of these.

Trial Examiner Norwood: Certainly.

Examination on Voir Dire by Mr. MacIntyre.

Q. Referring to Respondents' Exhibit 185, what
3300 request did you have for the material that is transmitted, or was transmitted by that document?

Mr. Gilpatric: I object to that question as not proper *voir dire* examination. It is cross-examination. He is asking why that letter was written.

Mr. MacIntyre: The letter is offered.

Mr. Gilpatric: He is not directing his questions to the authenticity of or competency of that offer.

Trial Examiner Norwood: Well, I think that this matter is being offered here on the ground that it was required by the Price Administration, or something like that.

Mr. Gilpatric: No, Your Honor. I am offering it sim-

ply as a showing of what Youngstown did, and I am also accompanying the offer by the price schedule of the Price Administrator. Whether or not it is applicable is something that is subject to determination by the Commission and the courts perhaps.

Mr. MacIntyre: It is going to require several more questions to find out whether it is applicable.

Trial Examiner Norwood: I should really like to know more about this before ruling on it, and counsel may ask the question, and I think I will overrule the objection to that.

Mr. MacIntyre: Will you please read the question.

(Question read.)

3301 A. Mr. MacIntyre, I wouldn't know what he—what papers Mr. Watson got from the Price Administrator that called for this answer, except that that was our filing, and when he started filing that book he called me in and asked me to get my conduit prices together for him, which I did, and which are in that book.

By Mr. MacIntyre:

Q. In other words, you do not know the nature of the request that was submitted to Mr. Watson, pursuant to which he replied with Respondents' Exhibits 185 and 186?

Mr. Gilpatric: I submit, Your Honor, that the letter speaks for itself. It does not refer to any request. The question of counsel for the Commission as asked is improper.

Trial Examiner Norwood: Well, now, if I let this thing in, I will certainly let in the whole story regarding the exhibits themselves. I don't know, I have a very inquiring mind.

Mr. Gilpatric: Well, all right. I withdraw the objection.

Trial Examiner Norwood: Answer the question.

Mr. Gilpatric: Read the question.

(Question read.)

Mr. Gilpatric: I do submit, Your Honor, that there has been no testimony or a showing that any request was made of Mr. Watson. The question of Mr. MacIntyre's

3302 assumes that there was.

Trial Examiner Norwood: Well, I think counsel has stated that a request was made, didn't he?

Mr. Gilpatric: No.

Mr. MacIntyre: May we have the answer of the witness read which precedes that question?

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Trial Examiner Norwood: Read the answer.
(Answer read.)
Trial Examiner Norwood: The question was answered.
Mr. MacIntyre: Not the last question.
Trial Examiner Norwood: Read the last question.
(Question read.)
A. No, I don't.

By Mr. MacIntyre:

Q. Did you ever see it?
A. No, personally, I did not.
Q. You do know that since the date of April 16, 1941, which is included in the body of Respondents' Exhibit No. 185, that there has been an increase in the price of conduit?
Mr. Gilpatric: I object, Your Honor.
Trial Examiner Norwood: Objection sustained.
Mr. MacIntyre: If Your Honor please, may I go off the record to make a statement?
Trial Examiner Norwood: Yes. Off the record.
(Discussion off the record.)
3303 Mr. Gilpatric: The pending offer consists of Respondents' Exhibits 185, 186, 187, and 189, for identification.
Trial Examiner Norwood: No. 189.
Mr. MacIntyre: 189 is the page.
Trial Examiner Norwood: 188 is the big book.
Mr. Gilpatric: Yes, 189.
Trial Examiner Norwood: 189.
Mr. Gilpatric: And I will withdraw the offer of 186, if the counsel for the Commission will concede the conduit prices included in that exhibit which were filed with Respondents' Exhibit 185.
Trial Examiner Norwood: You withdraw 186 here?
Mr. Gilpatric: Subject to the stipulation by Mr. MacIntyre that there were filed with Respondents' Exhibit 185 the card 84 of Youngstown and Youngstown delivery charge booklet, which are already in evidence in this proceeding.
Mr. MacIntyre: Well, may we go off the record for a minute?
Trial Examiner Norwood: Off the record.
(Discussion off the record.)
Mr. Gilpatric: The pending offer consists of Respondents' Exhibits 185, 187, and 189, the offer for 186 being withdrawn subject to the stipulation by counsel for the

Commission that this Respondent, Youngstown, in-
3304 cluded in the data referred to in Respondents' Exhibit 185, for identification, as having been filed with the Office of Price Administration and Civilian Supply copies of Youngstown's price card 84, which is in evidence as Respondents' Exhibit 55-Z-61, and also Youngstown's delivery charge booklet on conduit per thousand feet, a copy of which is in evidence as Commission's Exhibit 89, being the adder book of the Youngstown Sheet & Tube Company.

Mr. MacIntyre: Well, I agree that Respondents' Exhibit 186 included those two documents.

I object to Respondents' Exhibits 185, 186, 187, 188, and 189 as being incompetent, irrelevant, and immaterial.

Trial Examiner Norwood: Well, the objection is overruled and those exhibits are received in evidence; that is, Respondents' Exhibits, for identification, 185, 187, and 189.

RESPONDENTS' EXHIBITS NOS. 185, 187, and 189 were offered and received in evidence.

Mr. MacIntyre: But I would like to have Mr. Gilpatric also stipulate that 186 did not include any other documents relating to conduit other than the two we have discussed.

Mr. Gilpatric: I so stipulate.

Trial Examiner Norwood: Counsel did agree to that?

3305 Mr. Gilpatric: I did.

Mr. MacIntyre: Now, may I ask, off the record—

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

Direct Examination by Mr. Gilpatric (Resumed).

Q. Mr. Holly, will you describe the conduit sales organization of Youngstown briefly.

A. Yes. We have—in addition to our headquarters at Youngstown, we have 32, I believe it is, 32 offices around, scattered all over the country, from which a manager of an office and salesman travel the country calling on the trade in regard to our products, which, of course, includes conduit. We have approximately 120 salesmen that travel out of these offices.

Q. What are Youngstown's principal sales outlets?

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A. In regards to conduit?

Q. Yes.

A. Well, of course, we sell practically—the large percentage of our conduit is handled through the jobbers distribution—through the jobbers—electrical supply jobbers all over the country. Our policy is to sell through the jobber.

Q. How many jobbers would you say that you use for the distribution of your conduit stocks?

A. I don't know. We have—of course, I would
3306 only figure that on the amount of consigned stocks we might have. All told, I would say about 245.

Q. What percentage of Youngstown's total conduit sales are out of consigned stocks in the hands of its distributor agents?

A. Mostly all of our conduit over a period of years is handled through the jobbers' stocks except during the present emergency which we are so busy with at the present time for these jobs of all kinds that have gone on all over the country. We are shipping this material direct to these jobs and have been for the past 2 years now, since this emergency, and that—though most of the material is delivered through the jobber.

Q. Does Youngstown use a form of consigned stock agreement with its distributor agents?

A. We do.

(Documents were thereupon marked for identification "Respondents' Exhibit No. 190-A to 190-D.")

By Mr. Gilpatric:

Q. Mr. Holly, referring to one of your last answers there, did you give me in answer to my question as to the percentage of conduit sales out of consigned stock any figure?

A. No, I could not. I would say—of course, through the jobber's stocks all the smaller lots are all sold through
there, and if they happen to take a carload it may
3307 go to the jobber's stock and then serviced out of there, and it may go direct from Youngstown to the job. It is at the discretion of the jobber pretty much.

Q. What I am trying to get, Mr. Holly, is the percentage of your conduit sales through your dealers as contrasted with outright direct purchases.

A. I would say 90 percent of our stuff would go through the jobber.

Q. I show you Respondents' Exhibit 190-A through D, for identification, and ask you what that is.

A. That is a copy of our consigned stock agreement with our distributors.

Q. When was that form of consigned stock agreement put in use by you?

A. June 24, 1932.

Q. Is that agreement still in use by Youngstown?

A. Yes, we still use that same—same contract.

Mr. Gilpatric: I offer in evidence Respondents' Exhibit 190-A through D, for identification.

(Discussion off the record.)

By Mr. Gilpatric:

Q. Have you used that form of contract, Respondents' Exhibit 190, continuously since 1932?

A. Yes, we have.

3308 Q. Did you ever have any other form of agreement during that period?

A. Consigned stock—no agreement, no. That is the same contract we are using right along.

Mr. MacIntyre: I have no objection to this.

Trial Examiner Norwood: Received as marked, 190-A to D.

RESPONDENTS' EXHIBIT NO. 190-A to 190-D was offered and received in evidence.

Trial Examiner Norwood: Proceed.

By Mr. Gilpatric:

Q. Mr. Holly, who originated that form of contract?

A. That was prepared by our own attorneys, Mr.—Mr. Roy Manchester, who is since then dead, originally worked out that contract for us. That is our own contract used by our own company.

Q. Do you recall the circumstances that led to the use of that particular form, Respondents' Exhibit 190?

A. Except that our company worked out that contract and wanted us to put them into effect.

Q. Did Youngstown have other forms of consigned stock agreements in use prior to the use of the Respondents' Exhibit 190?

A. Oh, yes, we had—years ago we had a different form of contract.

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Q. Have you, or, to your knowledge, anyone else
3309 on behalf of your company, ever entered into any agreement, or had any understanding with any of the other manufacturers of conduit to adopt or use any particular form of consigned stock agreement?

A. No, we have not.

Q. Has Youngstown at all times felt free, and do you now feel free, to use or discontinue the use of any form of consigned stock contract?

A. Absolutely we do.

Q. How long has the consigned stock method of doing business been in use by Youngstown?

A. Well, I looked up an old contract for some reason some time ago, and just happened to—I remember the date is in 1925 because the wording was not exactly the same thing, but the same type of contract back in 1925.

Q. Does Youngstown use a form of specific building job contract in its conduit business?

A. We do.

(A document was thereupon marked for identification "Respondents' Exhibit No. 191-A to 191-E.")

By Mr. Gilpatric:

Q. Mr. Holly, I show you Respondents' Exhibit 191-A to E, for identification, and ask you to tell us what those documents are.

A. That is our specific building contract.

3310 Q. It is now in use?

A. It is now in use, yes.

Q. And when did you adopt the use of that?

A. That was sent out here by my assistant on November 20, '34, to our offices, asking me to use those contracts.

Mr. Gilpatric: I offer in evidence Respondents' Exhibit 191-A to E.

By Mr. Gilpatric:

Q. Has Youngstown used this form continuously since November 20, 1934?

A. We are using it right along.

Q. Have you ever used any other form during that period of specific building contract?

A. Not any other contract, no.

Mr. MacIntyre: The only objection I have to this is that it is immaterial that they used this form back in those days.

Trial Examiner Norwood: Objection overruled. Received as marked.

COMMISSION'S EXHIBIT NO. 191-A to 191-E was offered and received in evidence.

Mr. Gilpatric: To clarify the record, Mr. Examiner, Respondents' Exhibits 190 and 190-A to E are the very same documents that were marked for identification
3311 as Commission's Exhibits 705 and 706, but which were not offered.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

By Mr. Gilpatric:

Q. For how long a period, Mr. Holly, does Youngstown make it a practice to protect contractors under specific building job contracts in the event of price increases?

Mr. MacIntyre: I object. The contract form that just goes in shows that; doesn't it?

The Witness: That has been modified.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled. Answer the question.

A. Some time ago we were protecting our building contracts for six months. If the job wasn't going along properly, and the contractor got into trouble or one thing and another, we extended it again for whatever time was necessary, because we feel this way about it: We take a job, we have got to complete the job. It may take some time, but we try, naturally, to get the job gone off of our books as soon as we can.

By Mr. Gilpatric:

Q. Have you ever modified that period?

A. Yes, we have. In a good many cases we are using 90 days and extending it the same way.

3312 Q. Extending it an additional—

A. Extending it for an extra 90 days for whatever—as a matter of fact, if we had to go over that we did.

Q. Is there any similar protection against advances in price accorded to Youngstown's distributors or outright purchasers?

A. An outright purchaser, we would, of course, accept

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a building contract from him just the same. This is our own idea at home. We would give him what we think is 60-day requirements. In other words, we feel that he has certain obligations and he buys outright he is entitled today to what he purchases over 60 days. At 60 days we would accept an order from him and ship it at our convenience to his stock.

Q. Does Youngstown make it a practice to hold contractors under specific building job contracts to contract prices in the event of a price reduction?

A. It can't be done. We can't do that. If the price goes off we have got to meet the lower price immediately on the job.

Q. In your business as manager of conduit sales for Youngstown, do you endeavor to keep yourself familiar with the state of the demand for conduit throughout the country?

A. I have to do that, Mr. Gilpatric.

Q. How do you do that?

A. Well, of course, depend on our offices to give us a lot of information. We also employ Dodge reports
3313 which give us all sorts of information around the country. We have magazines of various kinds, and through those mediums we follow the jobs all over the country from the district office through to the job.

Q. Based on your experience and observation in the conduit industry, what do you say as to whether the demand for and total sales of conduit have varied and do commonly vary with fluctuations in the building industry?

A. Well, a change in price wouldn't make much difference to you. If the building industry is not there you just don't sell the conduit. You have got to have the building to move the conduit, and if you don't have building you don't sell conduit.

Q. Mr. Holly, will you describe generally the methods used by Youngstown's branch office and salesmen in soliciting sales of conduit?

A. Of course, each office—each main office has a manager to that office and he has men that travel out of that office, and they continually take—on my end of it now, which I am referring to—these men travel among the distributors. They also call on architects and engineers and contractors to develop what business is there and work accordingly on instructions from Youngstown.

Q. Based on your experience in selling conduit over the last 30 years, what are the principal factors in
3314 making conduit sales?

A. Well, of course, the first thing I found out your price must—

Mr. MacIntyre: Just a second.

I object to the further examination on this line as to the manner in which the salesmen and company operate. It isn't material or relevant—the charge is as to whether these people have fixed the prices at which they want their salesmen to sell conduit—for them to tell us how those salesmen operate in calling on customers and how many customers per day they call on. It just doesn't bear on the issue.

Mr. Gilpatric: Mr. Examiner, I think it does bear on the issue of the use of the basing-point system, which is here in the complaint, and I intend to be very brief about it.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

Mr. Gilpatric: Read the portion of the witness' answer.

(Answer read.)

A. (Continuing.) —price, quality of your product, and ability to make delivery of the material when they need it.

By Mr. Gilpatric:

Q. What do you mean by "price" in that answer?
3315 A. Well, your price—when you are calling on a man, first thing he wants to know what your price is, and your price has got to be right. If he is buying from anybody he wants to know that your price is the lowest price that he can get hold of before he actually places his business.

Q. Are there any other factors, besides the ones you have mentioned, that have a bearing on the sale by Youngstown of its conduit?

A. Of course, you have got to get acquainted with these people with whom you are doing the business, constantly live with them, in order to be able to get your share of the business in any territory.

Q. Does reciprocity play any part in Youngstown's sales?

A. It does, because we buy a lot of materials and we

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place a lot of materials through distributors, and in that way it ties us closer to that distributor.

Q. What instructions do you give your conduit salesmen and other agents for the sale of conduit in quoting prices on conduit?

A. Well, when we issue our cards to our offices, instructions—we ask them to go out and call on the trade, and in case they find that any other prices than they have are being made, to report all that information directly to Youngstown immediately, gather all the information they can and pass it back onto us.

3316 Q. Are your salesmen or other agents authorized to allow discounts or concessions from card prices without your approval?

A. Well, they got to come to Youngstown for that. We make the decision at home.

Q. Do you frequently have requests for approval for discounts and concessions?

A. We have.

Q. To your knowledge, has Youngstown ever agreed with any of the other manufacturers of conduit to adopt and use any uniform discounts or other forms of compensation to be allowed to its distributors, jobbers, or agents?

A. We did not.

Q. Does Youngstown make it a price to advertise its brands of conduit?

A. Oh, yes, we advertise in a great many electrical papers.

Q. Just name a few of them.

A. Then we advertise the whole line, for instance, in all sorts of magazines, plumbing, heating, ventilating, or anything it may be. All of them are advertisements, and then at a bottom a list of the products which we manufacture. I insist that conduit is included because that is my end of it. Then we advertise exclusively in electrical papers besides that, just showing conduit only.

Q. How is the conduit which you sell for Youngs-
3317 town customarily delivered or shipped?

A. Usually by rail.

Q. What has been the practice, if any, followed by Youngstown with regard to the maintenance of warehouse stocks of conduit?

A. Well, we—we haven't had any warehouse stocks, of

what you may call warehouse stock, for a great many years now. A long time ago we did have a warehouse. We do have warehouses today in California. We have one in Seattle, one in San Francisco, and one in Los Angeles. That is handled for us by the Allied Industries. They have represented us there for a great many years and have a staff of salesmen, in addition to our own offices in those same places, who help with them and contact the trade, and, being so far away from Youngstown, we ship in carloads to those warehouses and the material is distributed from those warehouses.

Q. Have you ever maintained a warehouse stock in or near Chicago?

A. We have conduit in our warehouse at Indiana Harbor today.

Q. Is that the conduit that is being manufactured there, or other conduit?

A. No. We make some there, and in addition we ship some from Youngstown to Chicago for the reason that we manufacture pipe in Chicago and some of the manufacturer—some of the folks who buy merchant pipe also
3318 handle conduit, and in shipping it to Chicago in carload lots we can include what small quantities they may want in the carload going out of Indiana Harbor.

Q. How long have you maintained that stock at Indiana Harbor?

A. Since 1938 when we sold the plant to the Clayton Mark Company. After they purchased our plant in 1938, we moved our conduit over to Indiana Harbor, and we have kept a stock there ever since.

Mr. Gilpatric: Will you read that answer, please.

(Answer read.)

By Mr. Gilpatric:

Q. You said in one of your earlier answers that you used to maintain other warehouse stocks besides those in Chicago and on the Coast?

A. We did. We used to have a warehouse for quite some time in New York City.

Q. When did you close that up?

A. That is quite a few years ago.

Q. Well, five, ten?

A. It is more than five years. I really don't know. It has been quite a good many years now.

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Q. Do you recall why you discontinued that warehouse?
A. We couldn't carry a stock and make any money in New York by shipping out of that warehouse.

Q. Was the discontinuance of that warehouse stock
3319 in New York the result of any requests or agreements from wholesalers or other manufacturers of conduit?
A. We pulled our stocks out and asked our distributors to carry a reasonable stock. They had it on consignment—
Trial Examiner Norwood: Wait a minute.
Read the question. Just answer the question.
(Question read.)
A. No.

Q. You stated that you couldn't make any money in New York on warehouse stocks. Please explain that.
Mr. MacIntyre: Well, I object to going into that. It is not material or relevant. I had no opportunity to object to the statement. It was included as a gratuitous voluntary statement on the part of the witness, and not responsive to the question. It should have been stricken.
Trial Examiner Norwood: Objection sustained.

By Mr. Gilpatric:

Q. Mr. Holly, to your knowledge, has Youngstown ever entered into any agreement or understanding with any of the other conduit manufacturers as to the maintenance or discontinuance of warehouse stocks in Chicago?
A. No, we have not.

Q. In the maintenance of warehouse stocks by Youngstown have you met any opposition from your dealers or distributors?

A. Yes, we have.

3320 Q. Will you explain that opposition.

A. If you carry a stock in any city, the distributors of yours who may carry large stocks in there, they feel the smaller fellow, who has no overhead in the small business, is able to purchase material out of that warehouse at a price, and have it delivered out of that warehouse at a price, which will not let the real distributor make any money. They always objected to warehouse stocks.
Trial Examiner Norwood: That put you in competition with your own customer?
The Witness: With our own customer, exactly.

By Mr. Gilpatric:

Q. Mr. Holly, the attorney for the Commission has offered in evidence abstracts of certain public bids submitted to the Panama Canal and certain sealed bids for public opening submitted to the Panama Canal and to the Bureau of Supplies and Accounts of the Navy. Have you had made an examination of those abstracts, which are in evidence as Commission's Exhibit 318 through 330 and 334 through 364, for the purpose of determining in the case of each abstract which bidder or bidders in addition to Youngstown listed on those abstracts bid on Youngstown conduit?

A. Yes, we have.

(A document was thereupon marked for identification "Respondents' Exhibit No. 192.")

3321 By Mr. Gilpatric:

Q. Have you had prepared a list of such bidders?

A. We have.

Q. I show you Respondents' Exhibit 192, for identification, and ask you whether that is the list you refer to.

A. That is the list we prepared, yes.

Mr. Gilpatric: I offer in evidence Respondents' Exhibit 192 (handing to Mr. MacIntyre).

Mr. MacIntyre: I would like to ask the witness a question about this document.

Trial Examiner Norwood: Proceed.

Mr. Gilpatric: Let me first ask one question, myself.

Trial Examiner Norwood: All right.

By Mr. Gilpatric:

Q. Am I correct in understanding, Mr. Holly, that this list includes the names of Youngstown distributors who have bid on Youngstown conduit in the openings that are referred to in the exhibits of the Commission which I mentioned?

A. That is correct.

Trial Examiner Norwood: Now, you know that by the brand names?

The Witness: No; by the name of the company. These companies are our distributors.

Trial Examiner Norwood: Yes. They don't han-

3322 dle any other conduit?

The Witness: To my knowledge, they don't handle any other conduit.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: I would still like to ask the witness a question.

Trial Examiner Norwood: Go ahead.

Examination on Voir Dire by Mr. MacIntyre.

Q. Is it your testimony, Mr. Holly, that these people do not handle any conduit other than Youngstown?

A. I say they may occasionally purchase other materials. To our knowledge, they are known as our distributors.

Q. And is it your testimony that in these exhibits to which Mr. Gilpatric has referred that they did not submit in their bids brand names of any conduit other than Youngstown?

A. So far as I know, they bid on Youngstown conduit.

Q. Well—

Mr. MacIntyre: Please read that question.

Mr. Stewart: I submit that is the beginning of cross-examination.

Mr. MacIntyre: The document is offered to show that they were bidding on Youngstown.

Mr. Stewart: All it undertakes to do is give the list of names of his distributors.

3323 Trial Examiner Norwood: Now, the question is, Do you object to the proffer?

Mr. MacIntyre: I do not know until I know whether or not it is a competent document.

Trial Examiner Norwood: I asked the same questions before you started there, and we are just where we were when you began.

Mr. Gilpatric: The witness has testified that he has had an examination made by his staff of all these abstracts and that that list was prepared after that examination.

Trial Examiner Norwood: Yes. Now, you may cross-examine him. The paper would be admissible to show which of those bidders were his customers.

Mr. MacIntyre: If the paper is now offered for the purpose of showing, and only for showing, that the people listed on this paper handled conduit of the Youngstown Sheet & Tube Company, then I have no objection to the paper. If it is offered for any other reason, then before I know whether I have any objection I ask that I be permitted to ask the witness other questions on voir dire.

Mr. Gilpatric: I will let my offer stand, Mr. Examiner.

Mr. MacIntyre: Well, if it is not limited to that, then I object to it as incompetent, irrelevant, and immaterial.

Trial Examiner Norwood: Objection overruled,
3324 and the paper is received as marked, Respondents' Exhibit 192.

Mr. MacIntyre: With that limitation?

Trial Examiner Norwood: Whatever limitation that the evidence shows should be properly made. You may cross-examine him on that. The paper simply contains the names of his customers there as he has described. That is what it is received for. Now, it may be used in proving a great many things.

RESPONDENTS' EXHIBIT NO. 192 was offered and received in evidence.

Direct Examination (Resumed) by Mr. Gilpatric.

Q. Mr. Holly, the abstracts of public openings put in evidence by the Commission, to which I referred, show that in a number of bids submitted by Youngstown the price quoted by it was the same as the price quoted by one or more other bidders. Have you any explanation to offer as to that circumstance?

A. Well, if we would quote, we would also have the jobbers who quoted for us—they would quote our price, which would be the same price, quoting on Youngstown material.

Q. Well, will you also explain—

Trial Examiner Norwood: Well, now, why do you know they would do that?

The Witness: We would ask—

3325 Trial Examiner Norwood: They are your agents?

The Witness: They are our distributors, and we would ask them—we would tell them what price to make in this bid.

By Mr. Gilpatric:

Q. Well, extending my question to include bidders other than your distributor agents, if there is shown a similarity in price between the bid put in by Youngstown and the bid of some other manufacturer of conduit, or some agent of such other manufacturer, can you explain that?

A. We wouldn't know that, because we don't know what the other fellow is going to quote. We have no idea.

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Q. Have you any policy which you follow in filing sealed bids for public openings?

A. Well, we quote—we either quote, ourselves, or file our name, or go to our distributors and tell them what price to make on that particular inquiry.

Q. Do you have any policy as to the price which you quote?

A. We would quote our price in effect—that we have in effect at that time.

Q. You mean the card price?

A. The card price. Today, for instance, would be card 84.

Q. Do you ever quote other than your card prices on public bidding?

A. We have.

3327 Afternoon Session.

1:45 P. M.

Trial Examiner Norwood: Come to order.

GEORGE F. HOLLY thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Gilpatric.

Q. Mr. Holly, there has been reference in this proceeding a number of times to carloads of conduit. Approximately how many tons of conduit go to make up a carload?

A. Ordinarily a car is considered 20 tons. They run heavier, but 20 tons is considered a carload.

Q. Since Youngstown filed its card 84 with the Office of Price Administration, has it sold any conduit at prices in excess of the prices quoted in that card?

A. No.

Q. Have you sold any conduit at less than card 84 prices?

A. I offered some for less than that.

Trial Examiner Norwood: Which card are you referring to?

Mr. Gilpatric: Eighty-four, the last one.

A. I offered some for less than that.

By Mr. Gilpatric:

Q. Have you sold any for less?

A. I don't know yet definitely. It may have got
3328 into Youngstown. I just bid on some within the past week, and whether—since I have been away whether anything happened or not, I don't know, but I offered some for less than card 84.

Q. Has Youngstown issued any card after 84?

A. No.

Q. In response to one of my questions this morning, Mr. Holly, you testified that in maintaining warehouse stocks that Youngstown met with opposition from some of its dealers. Was the closing of your warehouse in New York the result of pressure from your distributors in New York?

Mr. MacIntyre: I object to the form of the question. It is an improper question, doesn't call for a statement of facts. It calls for conclusions.

Trial Examiner Norwood: Objection overruled.

A. No.

By Mr. Gilpatric:

Q. Am I correct in understanding that the only warehouse you have ever closed is the warehouse in New York?

A. It may have been a great many years ago that we had some in Chicago, but we were close to Evanston. That is the only real warehouse that we have—we still have the Coast, you understand, but that is the only real warehouse we had, is New York.

Q. But you still maintain a stock at Indiana Harbor?

A. Oh, yes, absolutely.

3329 By Mr. Gilpatric:

Q. Before lunch, Mr. Holly, I was questioning you about your policy, that is, the policy of Youngstown, in the prices you bid on public openings. I don't think you explained to me what your policy was, as to whether you bid card prices or other prices.

Mr. MacIntyre: I submit that the witness has answered that question. The record shows that the witness answered that question just before the noon hour recess.

Trial Examiner Norwood: Let him answer it again.

The Witness: Can you read that again, please? I—

Trial Examiner Norwood: Read it.

(Question read.)

A. Well, in bidding on public—public opening bids we quote our card, and I will tell you just what our reason for that is, my reason at least, my argument on the thing is that if—

Mr. MacIntyre: Now, I object to the witness stating again.

Trial Examiner Norwood: Yes.

By Mr. Gilpatric:

Q. Just state the reason—

Mr. MacIntyre: He has stated what he has done.

3330 Mr. Gilpatric: I want to know what—

Mr. MacIntyre: Rather than arguing, I think we ought to get the facts.

Trial Examiner Norwood: Read the question. Read the question.

(Question and answer read.)

Trial Examiner Norwood: Go ahead.

A. If we find in open bidding that competition is making some prices we may decide to quote a cut price. When I say "a cut price" I mean below our present card 84. But if you do that—it is a public bid; everybody in the world knows about it, and the first thing that happens, if you happen to quote below your card, every jobber that gets ahold of it immediately wants to know why he can't buy conduit from you at the price you are quoting at the open or public bidding, or whatever you call it.

By Mr. Gilpatric:

Q. That has been your experience?

A. That has been our experience, yes. It has been put up to me many times.

Q. Besides the bids which Youngstown has submitted to the Panama Canal, and to the Bureau of Supplies and Accounts of the Navy, have there been any other public governmental agencies with which Youngstown has filed bids?

A. We are quoting on the Bureau of Reclamation.

3331 We quote on T.V.A., Procurement Division, Public Works, and Treasury bids, and we have a raft of bids in there all the time of that kind on which we are quoting.

Q. Mr. Holly, these abstracts of bids which the Commission has offered show that a total of 40 bids were submitted by Youngstown to the Panama Canal and to the Bureau of Supplies and Accounts of the Navy during the 6½-year

period from the beginning of 1935 until August, 1941. Would you say that those 40 bids represent the large part or a small part of the total number of bids which Youngstown has filed with public agencies during that period?

A. I would say it was a small part of the total number of other bids that relate back to Government business.

Q. What records, if any, does Youngstown have in its files on the subject of public bidding on conduit?

A. We have some of these bids that we bid on. We have the papers there at Youngstown. And we have our salesmen report back in the prices that were made, and we may have some of them on file.

Q. Do you make it a practice to instruct your branch offices and salesmen to submit to you such reports on public openings?

A. Definitely. That is the only way we can tell what is going on.

Q. Do you receive such reports in the ordinary course of business?

3332 A. We do. We do.

Q. Have you had prepared, Mr. Holly, copies of all such reports which you now have in your files at Youngstown, that is, reports from your representatives as to bids submitted at public openings which those representatives have attended?

A. I have, through my assistants at home, prepared those.

(Documents were thereupon marked for identification "Respondents' Exhibit No. 193-A to 193-Z-41.")

By Mr. Gilpatric:

Q. Now, I show you Respondents' Exhibit, for identification, 193-A to 193-Z-41, inclusive, and ask you whether those are the copies to which you have just referred.

A. Yes, those are the copies I asked the boys to work up from the papers we have in the office.

Q. And those are the copies of reports which you received from your salesmen and representatives in the usual course of business?

A. Of the records that were made; yes, sir. They are exact copies that were made up.

Q. Have you or, so far as you know, anyone else on behalf of Youngstown agreed with any of the other manufacturers of conduit to adhere to your card prices in submitting bids on conduit to Government agencies?

A. No, sir.

Q. In submitting such bids, that is, bids to Gov-
3333 ernment agencies, on behalf of Youngstown, do you feel free to quote any price you please regardless of what other bidders may do?

A. Absolutely.

Q. Have you any way of knowing in advance of filing of a particular bid to a Government agency what your competitors are going to bid?

A. I have no idea what they are going to bid.

Q. Will you state, Mr. Holly, the principal markets where Youngstown sells its conduit? Just briefly by locality.

A. Well, New York was always a big market for us until we had labor difficulties in New York, and Chicago, and the Coast. Those three points would be our large markets. Then, of course, we sell in other markets, but that—if you would ask me which is the largest markets, those three points would be the big centers for us.

Q. Was Youngstown ever a member of the National Electrical Manufacturers Association?

A. We were.

Q. Are you now a member?

A. No.

Q. When did Youngstown resign. Do you recall?

A. I couldn't tell you that, Mr. Gilpatric. I don't know.

Q. Do you recall the occasion of its resignation?

A. That is the Manufacturers Association.

Q. NEMA.

3334 A. Yes, I remember something about it. In the Manufacturers Association they have a good many manufacturers of various commodities, including manufacturers who manufacture materials which compete with conduit, and we in the conduit business are always interested in increasing our sales of rigid conduit, and when we tried to do that—when in NEMA we tried to see if we could work out some way of increasing the sales of conduit we would be treading on the toes of some of the other manufacturers which also belonged to NEMA, and NEMA just would refuse to allow us to do anything of that kind, so we just got out of NEMA.

Q. Were you, Mr. Holly, or, to your knowledge, anyone else representing Youngstown, ever present at a meet-

ing of manufacturers of conduit at which Mr. M. B. Austin, or Mr. Arnold A. Friend, on behalf of the Austin Company, were also present?

A. Not that I know of. I never saw them at any meeting that I know of.

Q. Mr. Holly, you testified when you were called as a witness by the attorney for the Commission in this case that you attended on occasion the semi-annual meetings of the Conduit Committee of National Electrical Wholesalers Association; did you not?

A. I think I did.

Mr. MacIntyre: May I have that question again?

Trial Examiner Norwood: Read it.

3335 (Question and answer read.)

By Mr. Gilpatric:

Q. Do you recall being present, Mr. Holly, at a—at a session of the Conduit Committee of National Electrical Wholesalers Association held at Hot Springs, Va., in May, 1937?

A. I don't remember, Mr. Gilpatric, that particular meeting, but I did attend those meetings at Hot Springs, but whether I actually attended this particular committee meeting, I don't know, but I have been in Hot Springs, going down there for years.

Q. Do you recall there having been made to you as a representative of Youngstown at these meetings requests by wholesalers relating to the practices in the conduit industry?

A. No, I don't remember any particular thing coming up.

Q. You have no recollection of it?

A. No, I have no recollection of it.

Q. To your knowledge, Mr. Holly, has Youngstown ever entered into any agreement or understanding with any of the distributors of its conduit as to the prices at which Youngstown conduit is to be sold by such distributors, other than the consignment stock agreements entered into by Youngstown with its distributor agents?

A. No, sir.

Q. In certain of the letters and other documentary material put in evidence by the Commission in this case, there are references to Mr. Henry Coblentz. Will

3336 you explain who Mr. Coblentz was, and what happened to him?

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A. I am sorry to advise you that Mr. Henry Coblentz has been my assistant for about 18 years, and just after this trial was started Mr. Coblentz got sick and passed away the latter part of May.

Q. You don't mean trial. You mean after the proceeding was brought?

A. After this proceeding started, yes.

Q. To your knowledge, has Youngstown ever agreed with any of the other Respondents in this case to be bound by any particular list of recognized jobbers or dealers in conduit?

Mr. MacIntyre: Now, I don't mind the witness being asked what the facts are, but to call for conclusions as to whether or not a certain set of facts had a binding effect, I think he is going a little too far.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I think he may answer that with respect to his own company only.

A. No.

By Mr. Gilpatric:

Q. Has Youngstown ever established any such list?

A. No, sir.

Q. Did you ever send a list of the jobbers with whom you deal to any other manufacturer or anyone 3337 else?

A. No, sir; we did not.

Mr. Gilpatric: Cross-examination, unless some of the other Respondents have questions.

Trial Examiner Norwood: Cross-examine him. Proceed.

Cross-Examination by Mr. MacIntyre.

Q. Mr. Holly, is it your testimony that the Westinghouse Electric Supply Company has submitted bids to the Federal Government only on your products?

A. When you say the "Westinghouse Electric Supply Company" it depends upon what branch of Westinghouse you are referring to.

Q. The branches in Seattle, Spokane, and in Washington, D. C.

A. Westinghouse in Seattle handle our material. Westinghouse in Washington, D. C., handle our material,

have consigned stocks and have a stock of our material in their stocks.

Trial Examiner Norwood: They are the ones that bid on that?

The Witness: They bid on our material, yes.

By Mr. MacIntyre:

Q. My question is, Is it your testimony that those branches of the Westinghouse Electrical Supply Company bid only on your product in their submission of bids to the Federal Government?

3338 A. I would say so.

Q. In other words, your testimony is that they have never submitted bids—

A. Well, I don't know as they never have.

Q. Well, within the past six or seven years?

A. They may if we couldn't give them the material or somebody else could give them a better delivery, or something of that kind; in this emergency they may have bid on somebody else's, but as a rule they bid on our material. They are considered our consigned stock jobbers.

Q. They handle brands of other companies?

A. They might.

Q. Well, isn't it a fact that you know they do handle brands of other companies?

A. Well, in certain branches, yes.

Q. Well, in these particular branches, Seattle, Spokane, and Washington, D. C.

A. They bought other brands from other competitors, particularly in Seattle.

Q. Well, in Washington, D. C.

A. They may, but Washington has been pretty close to Youngstown products.

Q. Well, is it your testimony that those branches have bid only on the brands of the Youngstown Sheet & Tube Company in their submission of bids, which are shown in the abstracts, Commission's Exhibits 318 to 330, in-

3339 clusive, 334 to 364, inclusive, and 716 to 737, inclusive?

A. I would say so. Of those particular branches, I would say yes.

Q. It is your testimony that in the submission of those bids that Westinghouse Electrical Supply Company did not submit bids on any other brand than the Youngstown Sheet & Tube Company; is that correct?

Mr. Gilpatric: I object to the question. It has been answered two or three times.

Mr. MacIntyre: Not this last question.

Trial Examiner Norwood: Objection overruled. Answer the question.

A. I would say they are bidding—as far as I know, they are bidding on our material.

Q. Well, I am asking you if you know that as to the submission of their bids on those products—on those projects and those openings that they bid only on your products?

A. I think so, yes.

Q. Well, do you know whether or not they did?

A. I answered.

Mr. Gilpatric: He answered, Your Honor.

A. (Continuing) It is awfully hard to be sitting here to say whether—

Trial Examiner Norwood: Let us find out. Go 3340 ahead.

By Mr. MacIntyre:

Q. I want to know whether you know that they did.

Mr. Stewart: Well, now, after all, may I submit—

Trial Examiner Norwood: I think he is entitled to that answer.

Mr. Stewart: He said, as far as he knows, two or three times.

The Witness: As far as I know—

Trial Examiner Norwood: Yes; but do you know that they did not.

The Witness: No; I wouldn't know definitely that they did not, but they are considered our distributors.

By Mr. MacIntyre:

Q. Now, is it your testimony that the S. Weinstein Supply Company in the submission of bids to the Federal Government, as is shown by Commission's Exhibits 318 to 330, inclusive, 334 to 364, inclusive, and 716 to 737, inclusive, submitted bids only on the brands of the Youngstown Sheet & Tube Company?

A. No. Weinstein, I could tell you definitely, he will get it any place he can, but he had bid on Youngstown material at various times.

Q. But—

A. I would have to see that particular bid to see whether—my records to see whether—on that par-
3341 ticular one he bid on Youngstown, but that man is a broker. He bids on anybody's stuff he can get hold of.

Q. You don't want your testimony here to be taken that he has bid, on any of those projects, only on Youngstown products?

A. That is right.

Q. And is it your testimony that the Rumsey Electric Supply Company has bid only on those openings on the Youngstown—

A. They have been practically a hundred percent a Youngstown distributor. I would say yes, as to Rumsey.

Q. That they don't bid on anything except your goods?

A. Youngstown.

Q. And what is your answer in that respect in regard to C. M. McClung?

A. McClung may buy some outside, but he has been bidding and he asked us for prices, and we quote him, and as a rule he bids on our material.

Q. Now, on these projects that I have referred to, is it your testimony that he did not bid on the Youngstown Sheet & Tube products?

A. I would say he bid on our material.

Q. Is it your testimony that he bid on that—

A. I would say so, McClung.

Q. —every time in those forty-some instances? What about the Myers Electric Supply Company?

3342 A. He would bid on Youngstown.

Q. And only on Youngstown?

A. Yes.

Q. And it is your testimony in those instances that he did bid only on your products?

A. Yes.

Q. What about the Mine & Smelter?

A. He would bid on Youngstown.

Q. And it is your testimony that in those 40 instances he bid only on Youngstown?

A. Only on Youngstown. I would say that from my knowledge.

Q. What about the Love Electric Company?

A. I am not so sure, Mr. MacIntyre, of the Love Electric Company.

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Q. In other words, you don't know whether in the submission—

A. He buys from us a great deal of stuff, but in some particular instances he might buy outside and bid on somebody else's material.

Q. You are not prepared to testify now whether in the submission of bids by him on these openings to which we had reference that he was bidding on the Youngstown or some other?

A. That is right, without going directly to the records and getting the bid out and definitely find out whether he used Youngstown on that particular project.

3343 Q. You haven't done that?

A. I haven't done that.

Q. What about Lavenson & Savasta?

A. He is a hundred percent a Youngstown distributor.

Q. And it is your testimony that in the submission of these bids on these openings to which we have just made reference he has bid on products of no company other than Youngstown?

A. That is right.

Q. Don't you know that he bids occasionally on Triangle Conduit & Cable Company's products?

A. Lavenson & Savasta? I don't know that. He has been on our books for a great many years, and been handling our products.

Q. Now, keeping in mind these openings to which we have had reference, what is your testimony with respect to whether J. J. Koepsell has bid only on the Youngstown products in those openings?

A. I know that on a number of those bids he has, because the prices were checked by my assistant and passed on to me, and the name was mentioned that he is asking for the prices.

Q. I am asking you about the sum total of those.

A. He may in some instances bid on others, but as a rule he bid on our material.

Q. But you are not prepared to testify that he didn't bid on others?

3344 A. He might have. Again, I would have to take that specific bid and go to the records.

Q. What is your testimony as to whether or not the Kubec Electric Company, in the submission of bids on the openings to which we have had reference, has bid only on the Youngstown material?

A. He would bid only on the Youngstown material.

Q. And it is your testimony that in those openings he did bid only on Youngstown?

A. Only on Youngstown.

Q. And what is your testimony as to whether or not the James Supply Company has bid only on Youngstown?

A. He has bid only on Youngstown.

Q. With respect to the openings we have been talking about?

A. That is right.

Q. And what about the Hyland Electric Supply Company?

A. Only Youngstown.

Q. And it is your testimony that on these openings to which we have had reference he has bid only on that?

A. Only, Mr. MacIntyre, I know of one case where the Hyland bid on other material, because he called me and talked to me, and I said we couldn't make the delivery, and he said to me, "Although I am your representative, I am going to quote him another make." Only one case that I know of.

Q. Do you recall when that was?

3345 A. I couldn't tell you that without going back to the record.

Q. In making up this Respondents' Exhibit 192 you didn't go to the record for the purpose of determining whether that was one of these openings?

A. No, I didn't.

Q. Now, with respect to the Melville B. Hall, Inc., is it your testimony that on these openings to which we have made reference in the last few minutes, that it submitted bids only on the Youngstown Sheet & Tube Company's products?

A. Mel Hall is our distributor, and he would bid only on Youngstown material, and the only time he would bid on anything else, if we were not in position to make delivery.

Q. What is your testimony as to whether or not on these openings to which we have made reference—

A. As far as I know, he bid only on Youngstown. He might. I wouldn't say.

Q. In other words, you wouldn't know whether he did or not?

A. I would have to have a specific case and check it back.

Q. And you haven't checked that back?

A. I haven't checked that back.

Q. What about the Grey Electric Supply Company? Would you say that they have bid on these openings to which we have made reference only on Youngstown Sheet & Tube Company products?

A. He occasionally buys from somebody else, but
3346 most of his conduit is from Youngstown.

Q. Are you prepared to say, then, that he submitted bids only on your product?

A. He submitted occasionally on other products.

Q. What about the Electric Supplies Distributing Company?

A. He would be Youngstown.

Q. And it is your testimony now that that company has never submitted bids on Federal Government projects except on Youngstown Sheet & Tube—

A. Except on Youngstown.

Q. Mr. Holly, I am showing you Respondents' Exhibit 189. Can you tell me who made the tabulation up?

A. From the book that was given to me, it was the Iron & Steel Institute.

Q. Can you tell me who, though, connected with the Iron & Steel Institute made up that tabulation?

A. No, sir.

3349 Q. Do you know any reasons which were used by the person who made it up for having included all the terms which are included on the tabulation?

A. No, I don't know.

Q. Is it your testimony, Mr. Holly, that anyone in the O.P.A., or any other Government body, requested at any time this year that your company file with it your prices on rigid steel conduit?

Mr. Gilpatric: Now, I object to that, Mr. Examiner. Mr. Holly made no such answer to any question I asked him. All he has done is identify certain documents. He has not testified that a request was made to anybody or by anybody. He simply identified these papers. And I submit this is not proper cross-examination.

3350 Trial Examiner Norwood: He gave us some testimony respecting the prices that were filed.

Mr. Gilpatric: Yes. He testified what price cards Youngstown filed on conduit.

Trial Examiner Norwood: Yes.

Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled. You may answer that question.

A. All I can say is that Mr. Watson, our vice-president in charge of sales, in getting up his prices to file, asked me to get my prices on conduit together to be filed with O.P.M.—Price Administration, or whoever it is. What is the correct name of that?

Mr. Stewart: Office of Price Administration.

The Witness: Office of Price Administration.

By Mr. MacIntyre:

Q. Do you have any knowledge of any request having been made to Mr. Watson by any agency for a filing of prices?

A. I didn't see it myself. He has handled it himself.

Q. Do you have any knowledge—

Mr. Stewart: I submit, now, the man says he doesn't know anything about it.

Mr. Austin: If Your Honor please, this is a perfect example of what I objected to on their voir dire exami-
3351 nation of this witness, because Mr. MacIntyre asked precisely this question, which he thought proper and had it answered this morning on voir dire examination.

Trial Examiner Norwood: Well, I do not see that that prejudiced anybody.

Mr. Austin: It is a waste of time.

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Is it your testimony, Mr. Holly, that since April, 1941, you have not increased any price quotations on the larger size conduit your company has been selling?

A. As far as Youngstown is concerned, we have not increased our prices.

Q. Why do you use the term "as far as Youngstown is concerned"?

A. Because you said—you made the statement here that somebody increased the price on conduit. We have not.

Q. You are attempting to limit your answer now to the Youngstown Sheet & Tube Company, or do you want to include in that answer also any wholesaler or jobber who sells Youngstown conduit?

A. I don't know that. I am talking about Youngstown's price increase over 84.

Q. In other words, you are not prepared now to testify

as to whether or not jobbers and wholesalers who han-
3352 dle from consigned stocks Youngstown Sheet & Tube rigid steel conduit have increased their prices or have not increased their prices above those on large size conduit which you announced in April, 1941?

A. Oh, I wouldn't know that.

Q. I am showing you Respondents' Exhibit 184. Will you tell us or give us the names of other rigid steel conduit manufacturers who used a duplicate of that particular document in the computation of delivered price quotations on conduit?

Mr. Stewart: What was that question, please?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Stewart: Well, now, I should like to know just what counsel means by that. You mean similar terms, or duplicate terms, or just what do you mean?

Trial Examiner Norwood: I think the question is clear. Do you understand the question, Mr. Holly?

The Witness: Whether some other company used the same booklet of this kind.

Trial Examiner Norwood: In computing prices, yes.

The Witness: Well, I wouldn't know, because this is our own booklet prepared by us, and what anybody else would do I don't know. This is made by our own company for our use.

Trial Examiner Norwood: Did anybody else get it?

3353 The Witness: We broadcast these around. Somebody may have gotten hold of them, Mr. Examiner, that is true; but I mean I wouldn't know. That is made for our use.

By Mr. MacIntyre:

Q. Is it your testimony that they did not get hold of them and use them in computing prices?

A. I wouldn't know that, Mr. MacIntyre. I wouldn't know that. It is our own freight bulletin.

Q. You are not prepared to testify that they did not use them?

A. That is right. I wouldn't know.

Q. Why did you issue price card No. 84 during January, 1941?

A. Why did we? I couldn't tell you that right now. I don't remember exactly without going back to our records.

Q. Well, if you issued your card 84 after a competi-

tor had issued a card 84 carrying the same prices, what would you say would be the reason that you issued your card?

A. Except to be competitive.

Q. That is, you would not know of any other reason?

A. Well, it all depends on what happened during that time. Was there any changes in labor cost? If some materials entered into it, a change in steel prices, or something of that kind. I would simply have to go back to our records to see what happened during that time.

Q. Where does the Youngstown Sheet & Tube
3354 Company get its steel pipe that it uses in the manufacture of rigid steel conduit?

A. In our own mills.

Q. It does not buy it from other sources, does it?

A. No, sir.

Q. In fact, it sets the price on steel pipe on occasions in the steel industry, doesn't it?

A. I don't know that. I am not in the pipe end of the business, Mr. MacIntyre. I wouldn't know that.

Q. Are you acquainted with the base prices at which steel pipe is sold?

A. I am not.

Q. Are you acquainted with the basing points used in computing prices of steel pipe which Youngstown Sheet & Tube Company sells for use in the manufacture of rigid steel conduit?

A. Basing points—on pipe or conduit?

Q. In the sale of pipe which is used in the manufacture of conduit.

A. I am not in the pipe end, Mr. MacIntyre, and I have nothing to do with it, and I know nothing about the pipe end of the business.

Q. Do you make an accounting from your conduit department in your company on the basis of the going prices on steel pipe?

A. Our executives decide that for me. I have nothing to do with that.

3355 Q. You do not know anything about that?

A. I don't know a thing about that part of it.

Q. You don't know whether the accounting is made, then, on the basis of the so-called basing-point prices plus freight on steel pipe or on some other basis?

Mr. Stewart: I submit that this really is carrying the

matter too far. The witness said the executives do that. He doesn't know anything about it. Why ask him any more questions on that?

Trial Examiner Norwood: Do you object to that last question?

Mr. Stewart: Yes, I do object to that last question.

Trial Examiner Norwood: Sustained.

Mr. Stewart: Thank you.

By Mr. MacIntyre:

Q. Well, if you do not know anything about the matter of the price of steel pipe which is used in the manufacture of rigid steel conduit, how were you able on direct examination to state that changes in the price of such product influenced your company on some occasions in changing its prices on conduit?

A. Well, of course, the pipe department is right there, and I can go in there and find out what is going on; but at the same time I have got to keep my sales up and get
3356 a profit out of conduit, and if I don't get a profit out of conduit I don't get the pipe, that is all. They will sell it through other channels. They are interested in profit, and that is what I am interested in.

Q. Well, do they tell you from time to time what you must get?

A. Our executives decide that in looking over their statements every 30 days, every month.

Q. But do they tell you from time to time what to set in the way of the conduit price?

A. I always talk it over with our vice-president and general manager. We always talk those things over.

Q. And when you go and talk it over with them, do you carry a price card which has been issued by your competitors?

A. As a rule, when I get ahold of them, sure.

Q. And discuss them?

A. Absolutely.

Q. Before they name your price?

A. We want to know what is going on, what is happening.

Q. You told Mr. Gilpatric that you issued card 72 March 17, 1936, which reflected a reduction in price by 27 percent. Do you recall that?

A. Yes, sir; I do.

Q. I believe the record is to the effect that you said 17 percent, but you meant to say 27 percent?

3357 A. I meant 27 percent; that is right. I meant 27 percent.

Q. And you also told Mr. Gilpatric that when you issued it, reducing the price 27 percent below that specified on the previous card, that you were attempting to make the price level as low or a little lower than the lowest price that you had found anywhere up to that time. Is that correct?

A. That is correct, yes.

Q. The prices which you had found just prior to that varied in their differences below card 71 all the way from those specified in 71 to approximately 25 percent below 71; is that correct?

A. That is correct.

Q. In other words, in some districts they would be 5 percent below the card; in other districts 10 percent below the card.

A. That is right. We found all sorts of prices, yes.

Q. But in all districts they were not as much as 20 percent below the card, were they?

A. That is true. That is true. In some districts they were not as low as 20 or 25 percent.

Q. And one of those districts was Philadelphia, Pa., wasn't it?

A. Well, I wouldn't say definitely. I can tell you where the ones really were. New York was the market that busted the price all to pieces. Of course, Philadelphia is pretty close to New York and they might have gotten it, but

3358 I couldn't say definitely.

Q. Pittsburgh was not anything at all like New York in cutting the price from card 71, was it?

A. I sold so little in Pittsburgh that I don't know definitely.

Q. Well, you are better acquainted with Cleveland?

A. Cleveland—in several cases I know they cut the price in Cleveland.

Q. But nothing like what occurred in New York.

A. New York was the largest one.

Q. Cleveland was not anything like New York.

A. In some instances in Cleveland did run below 20 percent.

Q. Many sales were made only just at or slightly below the card in Cleveland at that time?

A. It is possible.

Q. And you have already told us it was because of that condition that you issued this card 72?

A. That is right.

Q. You found an entirely different condition after you issued your card 76 on March 17, 1937, did you?

A. I don't know just what that card was any more. I don't know what prices were on that card.

Q. It is an increase of approximately 25 percent above card 75. Do you recall?

A. Seventy-six was an increase, as I remember.

3359 Q. Yes, of approximately 25 percent.

A. Probably the card would show that, whatever it is. Those are my personal papers. I just made my own.

Q. But you were able to issue your card 76, and you did issue card 76, because of changed conditions, competitive conditions, between the time that you issued 71 and the time that you issued 76; is that correct?

A. That would be true if the card showed that, Mr. MacIntyre.

Q. Well, the conditions did change.

A. If they changed, we changed our prices accordingly.

Q. Not so much price cutting at that time.

A. That is possible.

Q. You issued your card 80 in December, 1938, after the Garland Manufacturing Company issued its card 80, didn't you?

A. That is the only information I had in the office, and that is why I made the memorandum for myself.

Q. In other words, you issued your card 80 following the increase which was made by Garland on its card 80.

A. That is right.

Q. Is that correct?

A. I think so, yes.

Q. And you did that to be competitive with Garland?

A. That is right.

Q. What is the smallest size conduit that you

3360 manufacture at the Indiana Harbor plant?

A. Mr. MacIntyre, in that plant we are running from about two-inch to six-inch.

Q. Nothing below two-inch?

A. Right at the moment, no.

Q. And you store there one-half inch?

A. We have a big warehouse there, and we ship from

Struthers into that warehouse at Indiana Harbor from half-inch,—or any size we need in that warehouse.

Q. What is the date on which one-half inch conduit was last manufactured at Indiana Harbor?

A. We didn't make half-inch. Finished conduit pipe you are talking about? We didn't make any half-inch in Indiana Harbor.

Q. You never have made it?

A. Not at Indiana Harbor, no.

Q. When is the last time you made one-half inch at Evanston?

A. When we sold the plant to Clayton Mark—I think I said '38 when we sold the plant to Clayton Mark—we took some of the equipment with us. We did not sell the equipment to Clayton Mark. We sold the plant and other things, and we dismantled that and brought some of the equipment over to Indiana Harbor. All the finished pipe we had, and raw pipe, we shipped it to Indiana Harbor and put it in the warehouse. Some of the equipment is still there.

3361 Q. You ceased to manufacture one-half inch conduit in Chicago, then, in 1938?

A. That would be correct.

Q. And the plant in which you had been manufacturing that at Evanston you sold to Clayton Mark but took out of the plant all of the machinery and shipped it away?

A. Yes; we sent it to Indiana Harbor.

By Mr. MacIntyre:

Q. Mr. Holly, could your company continue to use the basing-point method of making its price quotations on conduit if others selling conduit—manufacturing and selling conduit did not use that method?

Mr. Gilpatric: I object to the question as purely a hypothetical question.

Trial Examiner Norwood: I think so, too, but I don't know. He gave his reasons for his pricing policy this morning.

Mr. MacIntyre: He has told us he could not do so and so if—

Trial Examiner Norwood: After all, this is cross-examination.

Mr. Gilpatric: All right, I withdraw the objection.

3362 The Witness: Will you read that for me, please?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Stewart: It seems to me "could it," that assumes he knows all the affairs of the company.

Trial Examiner Norwood: Read the question again.

(Question read.)

Trial Examiner Norwood: Objection overruled. Answer the question.

A. All I could say to that is we would have to be competitive in order—competitive situation would arise, that is what we would have to do, whatever the competition would be.

By Mr. MacIntyre:

Q. Well, do you know enough about the manner in which the basing-point method operates to tell us whether that it would be possible for you to continue to sell conduit?

A. No, I don't.

Q. You do not know anything about what the effects are?

A. No, I don't.

Q. Could you continue to sell conduit in accordance with the prices specified in your cards if your competitors did not also do so?

A. If my competitors sold—

The Witness: How does that read, again? I want to get that straight.

3363 (Question read.)

A. Well, if my competitors made lower prices, I would have to meet that price, no matter what card I had out, if I wanted to stay in business and do business.

Q. If they made lower prices, could you continue to sell on your cards?

A. No, I could not. In other words, I couldn't get more money for my stuff than the other fellow.

Q. You have told us that you filed your price card 70 with the Evanston base included as a method of figuring delivered price quotations, and as a basis for the level at which the delivered price quotations should be figured, as is shown by Respondents' Exhibit 180 to 182, inclusive, because you learned that Clayton Mark & Company had also filed the same things with Mr. Hodkinson. Do you recall?

Mr. Gilpatric: Now, I object to that question, Mr. Examiner, because that is not a correct statement of the evidence. Mr. Holly's testimony was not that he filed card 70 with the Evanston base. It was card 71 with the

Evanston base. He amended that by that telegram which you handed to the witness. He did not issue a new card.

The Witness: We did not issue a card.

Mr. MacIntyre: Well, I will ask a new question on it.

By Mr. MacIntyre:

3364 Q. You did file, then, with Mr. Hodkinson the information and requests, which are included in Respondents' Exhibits 180 and 182, because you learned that Clayton Mark & Company had filed a price card or price information with a showing of the use of the Evanston base?

A. Of the Chicago base.

Q. Of the Chicago base?

A. That is correct.

Q. And so you filed this with the Evanston base to meet that?

A. And Chicago base, too.

Mr. Gilpatric: I object, Your Honor. That document shows that it was a filing of the Chicago base.

The Witness: Chicago base, yes.

Mr. MacIntyre: I meant Chicago base to meet it.

The Witness: To meet it; that is correct. Chicago base.

By Mr. MacIntyre:

Q. Is it your testimony that you understood at that time that you could not file a lower price than the Clayton Mark & Company had filed?

A. I don't know that definitely any more, whether we could file a lower price, but that was the—I am not sure about that, but we were asked to file our prices, and when we found out that Clayton Mark had a Chicago base,

3365 which would affect us in the City of Chicago, we immediately corrected that to Mr. Hodkinson by that wire. I don't remember now whether at that time—whether the supervisor would allow you to do anything other than that card or not. I don't know that.

Q. In other words, you don't know whether Mr. Hodkinson would have allowed you to have continued without filing exactly the same price that Clayton Mark & Company had filed?

A. That is right. I imagine he would insist on filings. I don't know that.

Q. That is, of exactly the same level as Clayton Mark had filed; is that correct?

A. Well, he would ask us to file—if we made lower prices, he would ask us to file what those lower prices are.

Q. Now, is it your understanding that you could have filed with Mr. Hodkinson any lower prices that you were selling at than Clayton Mark?

A. I am not sure. I wouldn't know what Frank Hodkinson would do.

Q. You don't have any knowledge of what he did do on that?

A. No, I haven't.

Q. Or what he required?

A. I have no knowledge. It is so long ago and the papers, most of them are gone, I wouldn't know.

Q. If you have no recollection as to what was required on that, why did you file exactly the same prices,
3366 then, that the Clayton Mark Company did file?

A. Well, we would want to beat—Clayton Mark's price at that time in the City of Chicago would be lower than our Evanston price, Mr. MacIntyre, and when we found out, Mr. MacIntyre, that he had a Chicago base and I wanted to meet that Chicago price and didn't notify the supervisor, I don't know what he would do. I immediately sent a telegram.

Q. Why did you want to meet that price?

A. I am in the business, and I want to get all I can for my material.

Q. It is just a matter of selfishness in getting all you could; is that correct?

A. That is correct.

Q. Getting all your competitors would let you get?

A. That is correct.

Trial Examiner Norwood: An honest desire for gain, as the Supreme Court says?

The Witness: That is true.

By Mr. MacIntyre:

Q. You testified on direct that in your issuance of card 78 in July, 1938, which is an expression of the reduction in price, that you have followed in doing that, a price which had been announced by the National Metal Molding Company. You really meant to say the National Electric Products Corporation?

3367 A. National Electric Products. That is the old name; that is correct. The old name is National

Metal Molding. The new name is National Electric Products.

Q. So, in the issuance of your card 78 you merely followed the National Electric Products Corporation in the issuance of their card 78?

A. That is correct.

Q. Mr. Gilpatric called your attention to Commission's Exhibit 55, a statement of delivered price quotations by your company for contractors and wholesalers in Philadelphia and New York. Why didn't you issue statements of delivered price quotations for all customers at all points in the United States such as you did for Philadelphia and New York?

A. Well, that would be quite a job, and it was requested pretty much in the New York territory, which is a heavy market, and that was the only reason for it. We have never issued them any other places. It can be done, but we have never had the request. It could be done.

Q. There is only a single freight rate from your mill in Struthers, Ohio, or from the basing point in Pittsburgh to New York; isn't there?

A. A what?

Q. A single rate from Pittsburgh to New York?

A. That is what we figure, the rate from Pittsburgh to New York, yes.

3368 Q. There is one freight rate from Pittsburgh to New York. You wouldn't have a dozen on conduit; would you?

A. No. That is right.

Q. And there would be only one freight rate from Struthers, Ohio, to New York—

A. That is right.

Q. —on conduit?

A. That is right.

Q. You don't know whether they are the same or not; do you?

A. I think the Struthers—freight from Struthers would be a little higher to New York than from Pittsburgh; that is right.

Q. The freight from Struthers to Chicago is lower than the freight from Pittsburgh to Chicago?

A. That is right.

Q. You told Mr. Gilpatric that 90 percent of your stuff —you meant conduit—was sold through—

A. That is what I meant. I am so used to talking to—as my own case.

Q. —was sold through jobbers?

A. Except, as I said, recently. In this emergency we are shipping a tremendous lot of stuff—"lot of stuff" again—lot of conduit to these emergency jobs all over the country to get them rolling quickly, but it still goes through a jobber. I mean it doesn't go to the jobber's stock and then out of the—we ship it direct and bill it to the jobber.

3369 Q. But up until the defense program was undertaken during the past year, you would say you sold 90 percent through the jobbers' houses?

A. I would say the bulk of our stuff would go through the jobber.

Q. And what percent of that 90 percent was sold, in turn, by the jobbers and wholesalers for their own account?

A. Well, of course, all the conduit that we put into their stocks is our material until they report it sold at a certain time. We keep it there until it is sold. Now, whether they would report it sold—and you mean still have it in their place of business? That might happen. We wouldn't know. When the report comes in at the end of the month we take the figures that they give us and take it for granted that that is the material that was actually sold.

Q. Did you require them to send you the names of the buyers from them?

A. No; just the footage.

Trial Examiner Norwood: Do you ever check up on stock during the month?

The Witness: We send men out so many times a year, our own personal men, to check stocks.

By Mr. MacIntyre:

Q. They only check that stock which you had sent them to be held in consignment for you?

3370 A. They check what is supposed to be our material.

Q. And if other stocks are in the jobbers' warehouses under other brands or even under your brand that need not be accounted for, your salesmen do not check for it; do they?

A. They would check anything with our trade name—trademark on it to check with our records at Youngstown as to their records to see whether they conform to our records, whether the material we have charged against him is correct.

Q. And you have received reports from those who have checked for you that on occasions there has been more conduit in the stock bearing your trade name than needed to be accounted for?

A. We find those things, discrepancies for us and against us in these consigned stocks.

Q. Why do you use the consigned stock method of merchandising your conduit?

A. Mr. MacIntyre, that was established a long time ago with—I think our merchant pipe people went into that a long time ago. Naturally, this being a pipe proposition, our company made up its mind if it is good enough in steel pipe we will follow it in conduit, but I think we followed some of the other companies that put that into effect on merchant pipe.

Q. You have no real reason, other than that, which you can express to us now?

A. Well, our people feel it is a good—they seem to be satisfied with it.

3371 Q. But do you know—

A. No reason that I know of.

Q. —of any reason why you use it?

A. No.

Q. It gives you a better control over the prices which are made by the contractors for it; doesn't it?

A. Well, we have a right to ask the jobber regarding his selling prices.

Q. You, on direct examination, told Mr. Gilpatric that the factors which effected your sales were price, quality of product, and ability to make delivery. Do you recall that testimony?

A. Yes.

Q. What did you mean by "factors affecting your sales"? Did you mean the volume of your sales?

A. No. He asked me what—in making sales, as I understood it, in making sales of conduit—naturally, when you are calling on the trade the first thing he is interested in, what he is going to pay for it. The second thing he is interested in, is your product approved all along the line,

and is it approved on any of the jobs I may have, and then, of course, if it is a hurry-up job he is interested in, if I do give you the order, can you give it to me in time for the construction of this job?

Q. When you mention price in that connection as
3372 one of the factors—

A. Price. Of course, he wants to be sure he is buying at the right price.

Q. In other words, if you are higher than your competitors you won't get the order?

A. I won't get the order.

Q. If you are lower than your competitors and he is satisfied, you would get it?

A. Absolutely.

Q. You told Mr. Gilpatric that conduit manufactured by the Youngstown Sheet & Tube Company is usually delivered by rail. What other methods of delivery are used?

A. We shipped—he asked me how most of it is shipped. I said by rail. We truck some shipments.

Q. On the conduit which you sell and which is delivered by truck, your price quotations by your cards provide for the delivered prices to be the same, whether by truck or by rail; don't they?

A. That is correct. Only this, Mr. MacIntyre: You can ship by truck—at least we had a case where you can ship a man 10 tons by truck at the carload price, and in some cases it is good for us to do that because we can ship—especially now in this emergency when we are being crowded now so hard for materials we can ship in 10 tons and keep that stuff assorted—keep the conduit assorted and give them quick delivery, and so with an-
3373 other 10 tons, and it does not cost them any more money.

Q. But otherwise it is at the same price that you would deliver to him by rail?

A. That is correct.

Q. Will you please name all that you can of your jobbers and wholesalers who have opposed your carrying of warehouse stocks in New York?

A. Why, I couldn't—I couldn't tell you who—about warehouse stocks. We haven't had a warehouse stock in New York so long now that I couldn't tell you what—anything about that. We were never—

Q. Can't you name anybody?

A. No, I can't. I couldn't recall of anybody that objected to it.

Q. Do you recall the reasons for their objections?

A. Well, it—you take a warehouse stock, if you were a jobber in New York, we will say in New York where we have this stock, you take space out and carry a very large stock of conduit and the little fellow in some loft who has no overhead, in a small little place, and he can go over there, get that conduit out of your warehouse and deliver it. He is simply buying his material at a whole lot lesser price and probably sell it cheaper than the wholesaler who has overhead and keeps big stocks.

3374 Q. And in the latter class would be Graybar and Westinghouse in New York?

A. Oh, to my surprise they tell me there is some 250 or 200 and some odd jobbers in New York. I don't know that. And Graybar and Westinghouse are good jobbers. There are other jobbers—

Q. They would have this large overhead because of this big place?

A. They have a large overhead and carry large stocks to take care of their trade.

Trial Examiner Norwood: How would there be any difference, if you are consigning to your jobber agent, in meeting the expense of carrying the stock? Could the little jobber undersell your man?

The Witness: He would cut the price one percent or two percent to take the business away from the other fellow. He would undersell him.

Trial Examiner Norwood: But your man would not be put to any more selling expense than the little fellow; would he?

The Witness: No, he wouldn't.

By Mr. MacIntyre:

Q. Are you prepared to testify now that representatives of the Graybar or Westinghouse in New York did not make statements of objections to you about carry-

3375 ing warehouse stocks before you discontinued them?

A. I don't remember anything about the—the only thing I do remember about the warehouse stocks in New York, that it was costing us a terrible lot of money for what we were getting out of it.

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Q. Are you prepared to testify that representatives of the Latham Company didn't make objections to you before you discontinued your warehouse stocks?

A. I was never in the Latham Company's business. I don't recall that.

Q. Will you testify now that Latham Company's representatives didn't ever make statements to you about that?

A. I don't remember them making statements to me.

Q. Is it your testimony now that they didn't?

A. So far as I remember.

Trial Examiner Norwood: Did you hear of them making those statements?

The Witness: No, I haven't.

By Mr. MacIntyre:

Q. Who are your jobbers in Chicago?

A. Why, we have Kubec, Hyland, F. & G., Englewood, Ashland, some Westinghouse.

Q. Is it your testimony now that representatives of those jobbers in Chicago did not object to your carrying warehouse stocks there other than at your Indiana Harbor warehouse?

3376 A. Well, we had a—we had a plant right at Evanston, so it wouldn't be worth while, us carrying the stock at Chicago, which is only 10 miles out of Chicago.

Q. I am talking about Chicago itself, now, Indiana Harbor.

A. I know, but we wouldn't put a stock in Chicago when we had—

Trial Examiner Norwood: What about their objecting? That is the point.

The Witness: I don't know anything about that, because it wouldn't come to me, having a plant right there.

By Mr. MacIntyre:

Q. Is it your testimony that they had not objected to you about carrying your stocks at Indiana Harbor?

A. I don't remember anything about that.

Q. What is your testimony?

A. I don't know.

Q. You told Mr. Gilpatric that the conduit is usually in cars of 20 tons or more.

A. The smallest car runs about 20 tons. They run heavier than that.

Q. Is that the minimum?

A. In most cases about 18, some cases. Eighteen to twenty, probably twenty tons up. Most of them run heavier because you load them heavier. I have loaded them as high as thirty.

3377 Q. You told Mr. Gilpatric that your principal markets were Chicago, New York City, and the West Coast.

A. Our principal markets. We have markets all over the country.

Q. You sell some conduit in Philadelphia?

A. Some in Philadelphia.

Q. A substantial quantity?

A. I wouldn't say a whole lot in Philadelphia.

Q. And in Baltimore?

A. We have one distributor at Baltimore.

Q. Washington, D. C.?

A. We sell some in Washington.

Q. And Albany, N. Y.?

A. That is a poor market for us, Albany.

Q. You have some distribution there?

A. Oh, very little. Not enough to talk about.

Q. Is it your testimony that you use your adder book, which is in evidence here as Commission's Exhibit 73-B, for use in shipping as distinguished from your use of it for billing?

A. This—this book here?

Q. Yes.

A. No. That would be—that would be handled for billing, in making up an invoice, to make up a price. That has nothing to do with shipping.

Q. And you use that in connection with computing

3378 delivered price quotations?

A. Delivered prices, that is correct.

Q. As well as billing?

A. Yes.

Q. But no use is made of it in shipping?

A. I don't know what—what a shipper would have to do with the price. All he does is we send him a memorandum down there where to load, and he ships it, and we do the handling.

Q. In making out bills of lading and other shipping—

A. That I don't know; I don't think so.

Q. You don't know of any use that is made of it.

Mr. MacIntyre: I believe that is all.

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Trial Examiner Norwood: Examine him.
Off the record.
(Discussion off the record.)
Trial Examiner Norwood: You have no questions of this witness?
Mr. Gilpatric: I want to ask just two questions.
Trial Examiner Norwood: All right. Go ahead.

Redirect Examination by Mr. Gilpatric.

Q. In your answers to Mr. MacIntyre's cross-examination, Mr. Holly, you referred several times to "jobber," to your jobbers. Do you mean your distributor agents?
A. Our distributor, wholesaler; that is correct.
3379 Some call them wholesalers; some call them jobbers. That is the same thing with me. That is just what I meant.
Q. Did you ever furnish to any other manufacturer of conduit copies of your freight rate bulletin of December 1, 1930, to your knowledge?
A. Not to my knowledge. They may have got hold of them; but I don't remember at all.
Q. Were you ever requested by any other manufacturer to furnish copies of that bulletin?
A. I don't remember of it.
Q. Did Youngstown announce any increase in the price on large size conduit in April, 1941?
A. No, we did not. Now, we made no advance in any way above card 84.
Q. When was that card put out?
A. Eighty-four? Here, I think I have them right here.
Mr. MacIntyre: The record shows that.
A. January 24, 1941.
Q. And you have made no increase in any kind of conduit prices since then?
A. No increase in any kind. That is our card. That is our price.
Trial Examiner Norwood: Have you heard anything from this Price Administration about your maximum prices?
The Witness: No, I don't think so.
3380 Mr. MacIntyre: Did you get his answer there?
(Answer read.)

The Witness: Not that I know of.
Mr. Stewart: Off the record.
(Discussion off the record.)

By Mr. Gilpatric:

Q. In Mr. MacIntyre's cross-examination with respect to Respondents' Exhibit No. 192, you answered that the Love Electric Company did not always quote on Youngstown conduit.

A. I am not so sure of Love Electric Company. They are on the Coast. I would have—to be absolutely sure, I would have to take that up direct with our California people.

Q. Did Love ever, to your knowledge, bid on Triangle Conduit?

A. I don't know.

Mr. Gilpatric: That is all I have.

Mr. MacIntyre: I have—

Mr. Austin: I have a question.

By Mr. Austin:

Q. Mr. Holly, have you got any personal knowledge which would permit you to testify as to the amount of overhead of either Westinghouse or Graybar in any particular locality?

A. No, I haven't.

Recross Examination by Mr. MacIntyre.

Q. These jobbers of yours which Mr. Gilpatric
3381 referred to on his redirect as your jobber agents or manufacturers' agents, you know that many of them handle brands of conduit other than Youngstown Sheet & Tube; don't you?

A. They can buy it and they may at times, yes.

Q. They do handle it; don't they?

Trial Examiner Norwood: He has told us before. Anything further?

By Mr. MacIntyre:

Q. They do handle it, don't they?

A. In some cases some of them may.

Q. A good many of them?

A. The same old story, if you can't get it from one

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fellow and you have got to make sales, you will get it from the other fellow if he has it.

Q. They handle it simultaneously with yours?

A. I think so.

Trial Examiner Norwood: Anything further?

(Witness excused.)

Trial Examiner Norwood: Recess until 10 o'clock tomorrow morning.

Mr. Robison: I understand the witness is excused.

Trial Examiner Norwood: The witness is discharged; yes, sir.

(Whereupon, at 3:30 o'clock p. m., December 17, 1941, the hearing was adjourned.)

3384 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on yesterday, the hearing in Docket No. 4452 is now reconvened in Room 332, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., on the 18th day of December, 1941.

Please note the appearances.

The Respondents will please call their next witness.

Mr. Robison: Mr. Thoman, will you take the stand.

Trial Examiner Norwood: Have you been sworn, Mr. Thoman?

Mr. Thoman: I have not.

Trial Examiner Norwood: Will you give me your full name, please?

Mr. Thoman: Walter K. Thoman.

WALTER K. THOMAN, was thereupon called as a witness for the Respondents, and, having been first duly sworn, testified as follows:

3385 *Direct Examination by Mr. Robison.*

Q. Mr. Thoman, are you in the employ of the Youngstown Sheet & Tube Company?

A. I am.

Q. What is your position with the company?

A. Manager of the pricing department.

Q. How long have you held that position?

A. Ten years.

Q. In your capacity as such, do you have supervision over the books and records of the Youngstown Sheet & Tube Company relating to its sales of conduit?

A. I have.

Q. And do those records include invoices covering customers' orders for conduit that were received by Youngstown during the period from January 1, 1937, to January 24, 1941?

A. That's true.

Q. Have you had prepared by your staff, under your direction and supervision, a tabulation by tons of the conduit orders accepted by Youngstown during the period mentioned?

A. I have.

Q. Showing in respect to the orders placed during each month the tonnage sold at Youngstown's current card prices, and the tonnage sold at other prices, and also the percentage of the latter to the total sales?

A. Yes.

3386 Mr. Robison: I ask that this be marked for identification.

(A document was thereupon marked for identification "Respondents' Exhibit No. 194-A and 194-B.")

Trial Examiner Norwood: Off the record a moment?

(Discussion off the record.)

Trial Examiner Norwood: On the record.

By Mr. Robison:

Q. (Indicating) I show you a paper, Mr. Thoman, which has been marked for identification "Respondents' Exhibit 194-A and B," and ask you whether that is the tabulation just referred to?

A. It is.

Q. Please explain how the tabulation that you have just referred to, and that I just handed to you was prepared.

A. Well, for the period covered, we made sure, first, that we had, according to our records, all of the orders accepted by Youngstown during that period, and the contracts of sale as well, and under the sales at current card,—we accumulated the tonnages in the months in which the orders were accepted, and those which were taken at the current card we recorded under current card.

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Q. When you say "current," you mean the respective cards which were current from time to time?

A. Which were current in that particular month.

3387 Q. Yes.

A. From the same source we tabulated the tonnages which were accepted during these months at—orders which were accepted at prices other than the current card on the date of sale, accepting the customers' date on his order as being the date of sale.

Orders that were applied against contracts received at an earlier date—if the contract on the date of acceptance was accepted at a price which was in effect, current price which was in effect as of that date, all orders applying against that contract were considered at the current price in the month in which the order was—the specifications—was surrendered to us, under the date of that specification.

Now, I don't know whether that clearly explains the question, but so far as—

Q. Well, your statement is a statement of the process that you followed in making up the tabulation, Respondents' Exhibit 194-A and B, is it?

A. That's true.

Mr. Robison: I offer Exhibit 194-A and B in evidence.

Trial Examiner Norwood: Any objection?

Mr. MacIntyre: I would like an opportunity to study it just a little more, if I may.

I would like to ask one question about it.

3388 Trial Examiner Norwood: Go ahead.

Examination on Voire Dire by Mr. MacIntyre.

Q. Referring to this last column, which is a percentage column, is that what you have termed to be the percent of your sales which are made at prices off from card prices?

A. This percentage of one is to three.

Q. So that the record may be clear on it—

A. This percentage here is arrived at by dividing the total of two into sales at other prices, so this represents the percentage of our sales at prices other than current.

Q. Other than current?

A. That is right.

Q. Now, in response to Mr. Robison's question about the manner in which you had handled—in building this up had handled contract shipments, and in tabulating them you

had said that you had taken the date of the specifications, as I recall the expression.

A. That is right.

Q. Did you mean the date of the contract which placed with you the order?

A. Let me explain it this way: We might have received a contract in March and we would receive no specifications against that for tonnage until July. Then I would show that order—that tonnage as having been taken
3389 into our records in July at a current price.

Q. And not as of the date of the contract, which was in March?

A. That is correct.

Trial Examiner Norwood: Well, where you sold for future delivery on a contract, and the contract had been made at the current price, then all the product that was shipped pursuant to that contract was carried as having been sold on the current price?

The Witness: That is true.

By Mr. Robison:

Q. That is, the price current at the date of making the contract?

Trial Examiner Norwood: Yes.

A. That is true.

By Mr. MacIntyre:

Q. But you have taken there the date of the order as of the date of the first shipment under the contract.

A. The first shipment.

Q. The date of the first order for shipment under the contract?

A. The date of the first order which specified the quantities required as against the contract.

I might elucidate this way, by saying that when a contract is accepted it is usually for a maximum or a
3390 minimum quantity, and the specifications are accepted within a certain period of time. Usually that time is restricted in a contract and in receiving orders against the contract over that period, all of those contracts—all of those orders apply against that particular contract, and we take them into our records the day that we receive the specification; that is, the actual order for specified amounts, and if the contract was at the current price at the date of sale that order was considered a current sale.

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Q. But you have outlined to us here in the example that you have just given us that the first order under the contract might come and did, in many of these instances, come several months after the date of the execution of the contract.

A. That is true.

Q. And the date at which those shipments were made were controlled by the price as of the date of the contract and not as of the date of the first order under it: is that correct?

A. That is true.

Q. And are you prepared to testify now that in all of the instances where the handling of transactions of that type have taken place, and which are tabulated here, that no price changes took place between the date of the contracts and the date of the first orders under them?

A. There may have been several price changes, or
3391 there may have been none between the date of the contract and the receipt of the first specified order against that contract.

Q. In other words, you are not prepared to testify on that?

A. That is true.

Mr. MacIntyre: May we go off the record for a moment?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Let us go back to the record. Let us go ahead.

Mr. MacIntyre: Of course, before we go back to the record, if we may discuss this another minute or two—

Trial Examiner Norwood: I think we better go back to the record and let him elucidate it; then you can take it or leave it.

Mr. MacIntyre: Well, I—

Trial Examiner Norwood: Go ahead. Go ahead.

Mr. MacIntyre (Addressing Mr. Robison): Do you want the papers?

Mr. Robison: I have a copy.

Direct Examination by Mr. Robison (Resumed).

Q. Mr. Thoman, in preparing the data for this tabulation (referring to Respondents' Exhibit 194-A and B), how did you treat a shipment which may have been made
3392 under circumstances such as this, namely, that a contract had been made, I will say, in the month of March of one of these years; there then had been an increase in price in May of that year, and the first order for shipment, or specifications, as you called it, was received in June.

Now, what card price did you have reference to when you said here a few moments ago that in that case the order was taken into your tabulation at the current price,—current when?

A. Current on the date of the contract.

Q. On the date of the contract?

A. That's true.

Q. In my assumed example, that would be March of the year referred to, then, would it?

A. That's true.

Q. And although the shipment was made when a higher card price was in effect, you would still consider that to have been a sale at a current card price?

A. That's true.

Q. Namely, the card price in effect when the contract was made?

A. That's true.

Q. Is that correct?

A. That's true.

Mr. MacIntyre: May I follow that up with another
3393 question?

Trial Examiner Norwood: Go ahead.

Examination on Voir Dire by Mr. MacIntyre.

Q. Then, what did you mean by stating that you considered it current as of the date of the specifications which you heave outlined to us as being the date of a receipt of the first order under the contract?

A. I didn't mean to imply that, though. I meant to say that an order accepted against a contract, if there has been an advance in price, or has been no advance in price, will be billed at the contract price.

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Q. I see. It would be billed at the contract price, you would have to do that, but do you consider it, and did you consider it, in the making up of this tabulation, as being made at current card prices?

A. I think when—

Mr. Robison: Your Honor—

Q. When the specifications came in, as you call them, after there head been a change in price?

A. Yes.

Q. Intervening between that date and the date on which the contract was entered into?

Mr. Robison: Well, I think that counsel should make it clear as to what he means by "current," Mr. Examiner.

3394 Trial Examiner Norwood: Yes.

Mr. Robison: I think that that is where our confusion has arisen.

Mr. MacIntyre: That is what we are attempting to find out right now what the witness means by that language.

A. The statement is to portray our sales over a period of time as to what we consider sales at a current price or card price in effect on the date of a sale, and sales which were not made at our published price on the date of sale.

By Mr. MacIntyre:

Q. And you are taking the date of the sale as of the date of the first shipment under the contract?

A. We are taking the date of sale as being the date of the contract.

Trial Examiner Norwood: Yes.

The Witness: Your specifications—your order specifying certain definite number of feet of certain sizes under a contract which specifies so many tons, maximum or minimum,—then you have a specification in accordance with the terms of your contract; you enter that on your mill, to produce and to ship, as quickly as possible.

By Mr. MacIntyre:

Q. And you take it as of the date that you enter it for shipment?

A. We accept that as a specification on the con-

3395 tract, and we take it into our records,—what I mean by records, our records which consist of a register,—every order that is received must be registered, so that we may know that order through an identifying number in our

various departments, we must have some identification by which to follow through the acceptance of a specification to completion and shipment,—that is, to production and shipment.

Q. Now, all of the invoices which were used as a basis in making up this tabulation are in your files there today, are they?

A. We did not use invoices; we used orders.

Q. Do the orders show the number off the contract in such instance where they are shipped under a contract previously entered into?

A. That is true.

Q. And you have maintained the file of the contracts?

A. Intact.

Q. And you have a complete set of the orders which served as a basis for that?

A. That's true.

Q. And are they available for examination, if we desire to make an examination of them?

A. They are.

Mr. Robison: Also your working papers?

The Witness: Yes, sir.

3396 By Mr. MacIntyre:

Q. Will you keep them intact for us for future examination?

A. Well—

Q. Before this case is closed?

A. Yes.

Mr. Robison: Yes; I can give assurance that that will be done.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: Under those circumstances, I have no objection to the tabulation, subject to a showing of further clarification, or errors, if any, after an examination of the underlying material.

Trial Examiner Norwood: Respondents' Exhibit 194-A and B may be received in evidence.

RESPONDENTS' EXHIBIT NO. 194-A and 194-B, was offered and received in evidence.

Mr. Robison: That is all I have of this witness.

Mr. MacIntyre: I don't know whether I will have any cross or not. I will take a look at this and find out (referring to Respondents' Exhibit 194-A and B).

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I do have one question or two I would like to ask the witness about this.

Trial Examiner Norwood: Proceed. Cross-examine.

3397 *Cross-Examination by Mr. MacIntyre.*

Q. Now, will you—

By Mr. MacIntyre:

Q. Now, as I understand this document which you have in, Respondents' Exhibit 194-A and B, it should be interpreted, looking at Respondents' Exhibit 194-A, as showing that between December 4, 1936, and December 21, 1938, all of the sales of rigid steel conduit made by Youngstown Sheet & Tube Company were made—that is, of all the sales made, 63.5 percent of them were made at the current card prices; is that correct?

A. All orders accepted from January 1, 1937, to January 24, 1941—

Mr. MacIntyre: Will you please read the question back to the witness?

Trial Examiner Norwood: Read the question.

(Question read.)

A. It is not, according to the statement.

Mr. Robison: Well, reframe the question, then.

By Mr. MacIntyre:

Q. Does the figure appearing at the lower right corner of Respondents' Exhibit 194-A, then, mean that during the year 1938 of all of the sales of rigid steel conduit that were made by Youngstown Sheet & Tube Com-

3398 pany, 63½ percent were made at the card prices?

A. Thirty-six and a half.

Mr. Robison: No. He asked you at the card prices.

The Witness: Oh, that is true.

By Mr. MacIntyre:

Q. That is, 63½ percent were made at the card prices—

A. That is true.

Q. —throughout the year 1938?

A. That is true.

Q. And looking to the figure 39.3, near the lower right corner of Respondents' Exhibit 194-B, is that a showing to the effect that 60.7 percent of all the sales of rigid steel

conduit made by the Youngstown Sheet & Tube Company during 1941 were made at the current card prices?

A. That is true.

Mr. Robison: You mean it is true in so far as 1941 figures are reflected in the exhibit?

The Witness: That is true.

By Mr. MacIntyre:

Q. And now, referring again to Respondents' Exhibit 194-B, the figure that appears in the righthand column near the center of the page, 43.0, that is a showing to the effect that during the year 1939 of all the sales of
3399 rigid steel conduit made by the Youngstown Sheet & Tube Company, 57 percent were made at the current card prices; is that correct?

A. That is correct.

Q. And referring now to Respondents' Exhibit 194-A and the figure in the righthand column near the center of the page, 45.8, that is a showing to the effect that during the year 1937 of all of the rigid steel conduit sold by the Youngstown Sheet & Tube Company during that period, 54.2 percent was sold at the current card prices; is that correct?

A. It is.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Any redirect?

Mr. Robison: That is all.

Trial Examiner Norwood: Thank you.

(Witness excused.)

J. M. BARTON was thereupon called as a witness for the Respondents, and, having been previously sworn, testified further as follows:

Trial Examiner Norwood: Have you been sworn?

The Witness: I was sworn once before; yes, sir.

Trial Examiner Norwood: Yes, sir; that is right. Give me your full name again.

The Witness: J. M. Barton.

3400 Trial Examiner Norwood: Previously sworn, in the case.

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Direct Examination by Mr. Gentholts.

Q. Mr. Barton, I believe you testified in Pittsburgh that your first association with the rigid conduit industry was in 1929?

A. That is right.

Q. You became affiliated with the Fretz-Moon Tube Company then?

A. On the first of August, 1929.

Q. And Fretz Moon were manufacturing conduit then?

A. They were.

Q. How long had they been manufacturing conduit before that?

A. Since 1927.

Q. Well, now, will you tell us what was the method of distribution of conduit by Fretz-Moon Tube Company then?

A. When I went to Fretz-Moon in '29—or between '27 and '29, the major portion of the conduit products of Fretz-Moon were sold to the Triangle Conduit Company. That was the name of the company at that time. They had a contract with this company which specified that the Triangle Conduit Company would give the Fretz-Moon Tube Company a list of their distributors and the Fretz-Moon Tube Company would not solicit business—or conduit business from those distributors. Other dis-
3401 tributors than those that Triangle had on their list Fretz-Moon was at liberty to solicit business from, and did solicit business, and did sell some of the products to other dealers.

Q. Well, other than the conduit that was sold under the Triangle arrangement, how did you distribute that conduit?

A. That was consigned to jobbers.

(A document was thereupon marked for identification "Respondents' Exhibit No. 195-A, 195-B and 195-C.")

Q. Mr. Barton, handing you Respondents' Exhibit 195-A, B, and C, I will ask you when you used this form of agreement?

A. We were using this when I went there in '29. We used this form for both standard pipe and conduit. We would simply scratch out "standard pipe" and put "conduit" in here when we sold conduit.

Q. Was this the consignment form of contract, Mr.

Barton, you used while the Triangle agreement was in effect covering the sale of conduit, other than that sold by Triangle?

A. Other than Triangle; yes, sir.

Q. How long did you use this form of contract?

A. We used this form of contract until we turned our sales over to Steel & Tubes, and then Steel & Tubes had a new form.

Mr. Gentholts: I offer in evidence Respondents' Exhibit 195-A to C, inclusive.

Mr. MacIntyre: May I hear the last answer as to
3402 the period of time that this was used?

(Answer read.)

Mr. MacIntyre: Is it clear when that was done? Has the date been fixed?

Mr. Gentholts: How?

Mr. MacIntyre: Has the date been fixed when they turned that over to Steel & Tubes?

Mr. Gentholts: We will bring that out next.

Mr. MacIntyre: Did you fix the date when they started the use of it?

Mr. Gentholts: I think he testified.

Mr. MacIntyre: 1929?

Mr. Gentholts: I don't think it was as long as that.

Mr. MacIntyre: Well, if the date, the beginning of the use of this, and the date on which they discontinued use of it is fixed, I have no objection to it; but as long as it is clearly fixed.

Trial Examiner Norwood: Respondents' Exhibit 195 may be received as marked.

RESPONDENT'S EXHIBIT NO. 195-A, 195-B, and 195-C, was offered and received in evidence.

By Mr. Gentholts:

Q. Mr. Barton, when was the Fretz-Moon-Tri-
3403 angle selling arrangement terminated?

A. In November, 1929; the first of November, 1929.

Q. And then you continued the sale of your product under the form of consignment arrangement,—consignment contract,—as shown by Respondents' Exhibit 195-A to C, inclusive?

A. We did.

Q. Until the agreement was entered into between

Fretz-Moon Tube Company and Steel & Tubes, Inc.; is that correct?

A. That.s correct.

(Mr. MacIntyre and Mr. Gentholts confer at Counsel for the Commission's table out of hearing of Reporter.)

Trial Examiner Norwood: If you gentlemen want to confer any longer we will have a short recess.

Are you about through?

Go ahead.

Mr. Gentholts: Will you mark this for identification, please.

(The documents referred to were market for identification "Respondents' Exhibit No. 196-A to 196-I.")

By Mr. Gentholts:

Q. Now, Mr. Barton, showing you Respondents' Exhibit 196-A through I (indicating), I ask you to state what this exhibit is.

3404 A. This is a photostatic copy of a contract between the Fretz-Moon Tube Company, Inc., and Steel & Tubes, Inc.

Q. Does your signature appear at the end of the agreement?

A. Yes.

Q. As president of the Fretz-Moon Tube Company, Inc.?

A. Yes, I signed that.

Q. And this contract is dated January 2, 1934?

A. That's right.

Mr. Gentholts: We offer in evidence Respondents' Exhibit 196-A through I, inclusive.

Trial Examiner Norwood: Any objection?

Mr. MacIntyre: You are offering the photostatic copy, then, as marked?

Mr. Gentholts: Yes.

Mr. MacIntyre: And not bothering with the original?

Mr. Gentholts: That is right.

(Mr. MacIntyre studies and examines Respondents' Exhibit 196-A through I.)

Mr. Gentholts: While we are waiting, will you mark this for identification.

(The documents referred to were marked for identification "Respondents' Exhibits Nos. 197 and 198-A, 198-B, and 198-C.")

Mr. MacIntyre: I have no objection to Respondents' Exhibit 196-A through I.

3405 Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBIT NO. 196-A to 196-I was offered and received in evidence.

By Mr. Gentholts:

Q. Mr. Barton, did you negotiate this contract with Steel & Tubes, Inc.?

A. Yes, I did.

Q. Will you state, Mr. Barton, why you felt that this plan of sales distribution should be adopted by your company?

A. Steel & Tube had offices throughout the whole of the United States, district offices, and salesmen contacting the electrical trade. Fretz-Moon hadn't been able to set up a good selling organization after the termination of the Triangle contract; therefore, it was very much to Fretz-Moon's advantage to avail themselves of the Steel & Tubes' selling organization, and we considered it an economical proposition.

Q. Well, under this selling arrangement, Mr. Barton, is rigid steel conduit sold on the consignment basis?

A. Practically all of it.

Q. Well, will you tell us how that operates under this selling arrangement with Steel & Tubes, Inc.?

A. On orders to Steel & Tubes, we will ship the conduit to their distributors, Steel & Tubes consignment to the distributor. The material remains the property of

3406 Fretz-Moon until sold and paid for. We carry the investment. Steel & Tubes do not carry that investment, and they do not have to pay for the products until they are sold; although they are entirely responsible for the product, any deterioration, loss, or anything of that nature is a liability of Steel & Tubes. They consign it to the distributor.

Q. How about the selling price? Who determines that?

A. Fretz-Moon.

Q. Now, Mr. Barton, the rigid steel conduit sold by your company, as I understand it, is all manufactured at East Butler, Pa.?

A. It is.

Q. Are you in a position to state whether Steel &

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Tubes, Inc., or Steel & Tubes, Inc., now dissolved, has ever manufactured rigid steel conduit?

A. I am; they have not.

Q. How about Republic Steel Corporation?

A. They never made any conduit,—rigid steel conduit.

Q. What other products are manufactured by you other than rigid steel conduit?

A. Standard buttweld pipe.

Q. How much of your plant capacity is taken up in the manufacture of rigid conduit?

A. Twenty percent,—about twenty percent; average twenty percent, I would say.

3407 Q. Can you reduce that to tons?

A. Oh, that varies with the state of business; it all depends on the state of business, what the tons will be.

Q. Could you state your plant capacity?

A. Yes, we have a capacity of a thousand tons a month.

Q. How much?

A. One thousand tons a month for rigid steel conduit.

Q. Mr. Barton, how long has the method of distribution on a consignment basis been in effect, in so far as your company is concerned?

A. Ever since we started into the pipe business, or the conduit business; as far back as I know.

Q. Why do you use this method of distribution?

A. This was the established method; distributing the products when Fretz-Moon entered the conduit field. That would be the primary reason. I think that the big reason why you would continue it, is purely a credit reason, a lot of the distributors that you sell it to couldn't buy the amount of conduit that is necessary to put in their stocks to take care of the trade. It takes a six months' supply, on an average, in stock, in order to take care of the trade, and there are a lot of distributors, many of them,—I would almost say most of them,—whose credit would not warrant that much investment; whose credit position would not allow that much investment.

Q. Have you ever made sales of conduit other 3408 than on a consignment basis?

A. Yes, sir.

Q. Mr. Barton, what is the practice of your company with respect to the submission of bids on public openings?

A. We generally quote card prices. That would be our practice.

Q. Why do you follow such a procedure?

A. Well, in the first place, you don't care to advertise to all your distribution that you might sell at prices lower than your established price. On these public openings if your price is lower than what you are selling to your jobbers, why, two or three times with openings of that nature, you will have to reduce your price to all your trade to that level.

Q. Do you have any knowledge with respect to public bids as to what your competitors quote?

A. Absolutely none.

Q. Do you have any understanding or agreement with any of your competitors as to how much you quote on Government work?

A. We do not.

Q. Mr. Barton, how long has your company used the basing-point method of quoting delivered prices?

A. As long as they have been selling.

Q. Have you ever had any customer ask you to quote otherwise?

3409 A. Yes. Occasionally they will ask you to quote f.o.b. mill. That is especially true of the Government, that they want to avail themselves of land-grant rates, but not from—not from jobbers. I don't think we ever had a jobber ask us to quote anything except a delivered price.

Q. Does your company have any agreement or understanding with any of your competitors with respect to the use of the basing-point method of quoting delivered prices?

A. No, sir.

Q. Mr. Barton, I believe you have testified previously that you purchased the so-called Donley freight service in June, 1937?

A. Yes.

Q. What form of freight service bulletins did you use before that time?

A. Oh, a form similar to that. We got it from other sources. I think that we copied a sheet that the Youngstown Sheet & Tube used. We copied that. That wasn't as complete as the Donley sheets.

Q. Well, now, under your selling arrangement with Steel & Tubes, explain how the distribution of the freight bulletin service operates.

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A. Well, we—we purchase the bulletins and give them to Steel & Tubes for distribution to the trade.

Q. When you say "we" you mean Fretz-Moon—

3410 A. Fretz-Moon.

Q. —Tube Company?

A. Yes.

Q. And turn them over to your selling agent for distribution?

A. That is right. That is right.

Q. Steel & Tubes—your selling agent is not obligated under the agreement to supply any of that information?

A. No, they are not.

Trial Examiner Norwood: What was that last answer? (Answer read.)

Trial Examiner Norwood: Thank you.

By Mr. Gentholts:

Q. Well, now, when you purchased the Donley service, Mr. Barton, or considered the purchase of it, did you discuss the matter with anyone before you made your decision?

A. We discussed it with the traffic department of Republic Steel Corporation. See, the Republic Steel—the traffic department of Republic Steel Corporation head always checked all our freight bulletins for accuracy, errors, and any errors that they would discover would be rectified, either overage or undercharges, and they recommended that we take the Donley service as being first class service.

Q. Do you know why that recommendation was made?

A. It was cheaper than Republic could do it for us.

3411 It was purely because it was cheaper.

Q. Well, now, you have testified that your freight charges are checked by the traffic department of Republic. What happens, Mr. Barton, after a shipment is made and it is discovered that an error is made, either an overage or undercharge?

A. Why, Republic report it to us, and if we have overcharged, a credit is allowed the customer. If we have been overcharged, claim is made against the railroad.

Q. Mr. Barton, have you ever had any understanding or agreement with your competitors with respect to the use of the so-called Donley Freight Service?

A. No, sir.

Q. Mr. Barton, in using the information that you secured from Youngstown Sheet & Tube Company, I will ask

you whether you had any understanding or agreement with them with respect to the use of that service?

A. Oh, no. No, sir.

Q. I believe you testified before that you first became associated with the Rigid Steel Conduit Association as a director on November 12, 1936.

A. That is right.

Q. Had you attended any meetings before that time, Mr. Barton?

A. I had attended the conduit meetings; yes, sir.

Q. And your first official connection with the Asso-
3412 ciation was on November 12, 1936?

A. In an official capacity, that is right.

Q. Now, Mr. Barton, under date of November 20th, there is evidence in the record in the form of minutes of directors' meeting of the Conduit Association which indicates that you were present, at which time the meeting considered certain recommendations of Mr. Blake with respect to a form of distributors' contract. Do you remember such meeting?

A. November, what year?

Q. November, 1936.

A. 1936. That is right. I think I remember that.

Q. Now, what did you do, in so far as Fretz-Moon is concerned, with respect to the use of the suggested form of consignment contract?

A. Well, we studied it over, I and our people at Butler, my associates at Butler. We studied that contract, compared it with what we had been using. There were some slight changes in it that didn't alter the—the effects of the contract, but we thought were worth while making. We submitted it to our legal department and they made some alterations in it, and we adopted it.

Mr. MacIntyre: Now, I move that that portion of the witness' answer be stricken which attempts to state that these changes which were made in the contract did not change its effect. It is nothing in the world except a
3413 conclusion of law and a rather fine one at that, because I dare say there isn't an attorney in the room who can say what the effect was in the change.

Trial Examiner Norwood: Read the question and the answer.

Mr. Stewart: If that is another challenge, I will enlighten you on the subject and give you a brief on that.

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We are quite well prepared on that, and Mr. Barton is absolutely right.

Mr. MacIntyre: We can have the brief before the Commission and the courts.

Trial Examiner Norwood: Well, it won't have to be sworn to.

Go ahead.

(Answer read.)

Trial Examiner Norwood: Now, I shall overrule the objection with the understanding that that is merely to show what this witness thought about it, not to establish the fact that the new contract did not make any change.

Did you complete your answer?

The Witness: Yes. I finished the answer.

By Mr. Gentholts:

Q. Well, Mr. Barton, with respect to this form of agreement, I will ask you whether you had any agreement or understanding with your competitors with respect to
3414 the use of this new form.

A. No, sir.

Q. Now, at this same meeting there was submitted for your consideration a form of specific building contract. What did you do with respect to that suggestion?

A. We handled that form exactly as we handled the consigned stock form.

By Mr. Gentholts:

Q. Mr. Barton, I call your attention to Respondents' Exhibit 197, and ask you to state what that document represents.

A. This is a photostatic copy of the assignment of the Fretz-Moon Tube, Inc., and Steel & Tubes, Inc., contract to Republic Steel Corporation, which took over the assets of Steel & Tubes, Inc.

Q. This exhibit bears your signature?

A. It does; yes, sir.

Q. Now, what was the reason for this agreement being entered into?

A .A change in the corporate set-up, the Steel & Tubes, Inc., being taken into Republic Steel Corporation as a division of Republic Steel Corporation.

3415 Q. So that from September 30, 1939, the Steel & Tubes division of Republic Steel Corporation took

over the operation of the selling agreement between Fretz-Moon Tube Company?

A. They did.

Q. And formally Steel & Tubes Company is now dissolved?

A. Yes, sir.

Q. And, Mr. Barton, this is the assignment of the contract which is already in evidence marked Respondents' Exhibit 196?

A. It is.

Mr. Gentholts: We offer this Exhibit 197 in evidence.

Trial Examiner Norwood: Any objection?

Mr. MacIntyre: May I see it, please?

(Mr. Gentholts hands the document to Mr. MacIntyre.)

Mr. MacIntyre: No objection.

Trial Examiner Norwood: Received as marked, Respondents' 197.

RESPONDENTS' EXHIBIT NO. 197, was offered and received in evidence.

By Mr. Gentholts:

Q. Mr. Barton, I will ask you whether your company has ever worked with other Respondents in the preparation of a specific list of recognized jobbers whom you dealt with exclusively in the sale of conduit?

3416 A. I have not.

Q. Have you ever seen such list?

A. I have never heard of such a list.

Q. Have you ever attended any meeting where the subject of forcing jobbers to maintain prices was discussed?

A. I have not.

Q. What is the fact as to whether you ever canceled any contract for failure to maintain resale prices?

A. We have not, not to my knowledge.

Q. Have you ever threatened to cancel a contract for failure to maintain resale prices?

A. No. To my knowledge, no.

Q. Mr. Barton, does your company, or through your selling agent, the Steel & Tubes Division of Republic Steel Corporation, maintain warehouse stocks?

A. We have none now. Until recently we had one in Los Angeles. We have no warehouse stock at all now.

Q. When was that warehouse stock abandoned?

A. I can't tell you exactly. It has been out of there

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six, eight months, about that length of time; nine months, maybe. The last of it was taken out by that time.

Q. Well, I will ask you, Mr. Barton, whether you had any agreement with your competitors, or with these Respondents with respect to the elimination of warehouse stocks.

A. Never have.

3417 Q. Mr. Barton, I will ask you whether you ever attended any industry meeting when you heard any conversation by anyone as to a General Electric representative stating specifically, or in substance, that they would drop the price of conduit from card 72?

A. I did not. Never heard of it.

Q. Have you ever heard any conversation at any meeting where that subject was discussed with respect to any card?

A. I have not; no, sir.

Q. Mr. Barton, how long did you continue your participation in the affairs of the Association?

A. Until '39. The fall of '39 I resigned as a director.

Q. Why did you resign, Mr. Barton?

A. I just didn't want to be bothered with it; didn't want to do the traveling, attend the meetings.

Q. Now, Mr. Barton, I call your attention to Commission's Exhibit 621, and ask you whether you recognize this letter.

A. I wrote it.

Q. Well, now, calling your attention specifically to that portion of the letter which states: "It is costing us today at least $5 per ton for not following your advice, and at this rate the total cost runs into a very substantial figure," will you explain what you mean by this statement?

A. Well, that was a statement not based on fact. That was—I wanted to say something nice, and I said that.

3418 That is all there was to it. An examination of our books, our records, will indicate that the opposite was true. Instead of getting less, we have gotten more ever since.

Q. In other words, the prediction you made in that letter did not materialize?

A. It did not at all. It might have been I was down in the dumps then. Maybe one of our salesmen made a bum sale the day before. Maybe that induced it, something like that.

Q. Mr. Barton, was Steel & Tubes, Inc., or the Steel & Tubes Division of Republic Steel Corporation, ever a member of the Rigid Steel Conduit Association?

A. They were not.

Q. Was Republic Steel Corporation ever a member of the Association?

A. They never were.

Q. Now, Mr. Barton, with respect to Commission's Exhibit 65, which is in evidence in this case, which represents the price cards published by Fretz-Moon Tube Company, Nos. 69 to 84-A, excepting cards Nos. 73 and 79, will you state how these price cards are published with respect to your relationship with Steel & Tubes, Inc., under your selling arrangement?

A. Well, we prepare the cards and give them to Steel & Tubes for distribution. Fretz-Moon prepare the cards and furnish them to Steel & Tubes for distribution to the trade.

Q. So that there is only one set of price cards that
3419 are in effect, in so far as your selling arrangement is concerned?

A. That is right.

Q. Mr. Barton, I direct your attention to the various Fretz-Moon price cards that are in evidence in this case, and ask you to examine them and state whether you inaugurated any of the price changes that were made by those cards?

A. Well, without an examination, I can state that we did not inaugurate any of these cards. Fretz-Moon being such a small factor in the industry, something less than 5 percent, Fretz-Moon is not in a position to inaugurate a price. All Fretz-Moon can do is to follow the lead of the—of the industry.

Mr. MacIntyre: Now, if Your Honor please, I move that the answer of the witness be stricken. It is speculating and concluding as to what Fretz-Moon could or could not do. I do not mind the witness telling us what it has done and has not done, but to speculate, I do object.

Trial Examiner Norwood: Overruled. What he did in substance is to make a factual statement there.

By Mr. Gentholts:

Q. Mr. Barton, as a manufacturer, are you in a position, or do you have any information with you that will enable you to testify as to whether any of these price changes that appear on these cards, as the result of these cards, were

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made as the result of changes in the cost of—the selling price of merchant pipe?

3420 A. I have information with me that will show that changes in the conduit cards followed changes in the cost of standard pipe or the raw pipe for conduit.

Q. Well, now, before you look at that memorandum, I will ask you whether you are in a position to answer that question by examining the price cards that are in evidence here.

A. I am not. No, I can't do that here.

Q. Well, get your memorandum out.

3422 By Mr. Gentholts:

3423 Q. Well, now, Mr. Barton, consulting your memorandum which you have with you—

Trial Examiner Norwood: Well, now, what is that memorandum? We have to know something about that.

The Witness: Why, this is a tabulation of the price cards and the price per hundred feet for half-inch galvanized pipe, with the jobbers' discounts, and this column here shows the net return per hundred feet under those prices. In pencil out here I have extended the return per ton of half-inch galvanized pipe. That is these penciled figures here. These penciled figures in here are the changes in the price of standard pipe.

Trial Examiner Norwood: You have a tabulation there showing the relation of the price of raw pipe to the—

The Witness: No, that is not a—

Trial Examiner Norwood: —to the conduit prices?

The Witness: I have on this sheet here the changes in the prices of pipe set up against the—against the conduit card. For instance, on card 67, the date of that card was March 31, 1933. On—

Trial Examiner Norwood: You made this memorandum yourself from original records?

The Witness: From our records at the office, yes, sir.

3424 Trial Examiner Norwood: Is that marked for identification?

The Witness: It has not been.

Trial Examiner Norwood: Mark it.

Mr. MacIntyre: I would like to see the memorandum before the witness testifies from it.

Trial Examiner Norwood: Yes.

(The document referred to was marked for identification "Respondents' Exhibit No. 199.")

3425 By Mr. Gentholts:

Q. Mr. Barton, I will ask you, did a price change occur with respect to merchant pipe on or about July 18, 1933?

A. On July 1, 1933, there was an increase of $7 a ton in the price of merchant pipe, standard buttweld pipe.

Q. Now, with respect to your card No. 70 pertaining to rigid conduit, dated July 21, 1934, state whether or not there was a price change that occurred with respect to the selling price of merchant pipe that occurred on or about that time.

Mr. MacIntyre: I object. It calls for irrelevant and immaterial matter.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

A. There was a change in price of standard pipe about three months prior to that. On May 30, 1934, there was an increase of $7 a ton. Card 70 was dated July 21, '34.

By Mr. Gentholts:

3426 Q. Now, Mr. Barton, calling your attention to your price card No. 71, can you state the reasons for the revisions that were made in your prices on card 71?

Mr. MacIntyre: That is objected to as duplicating the record. The witness has testified that he made his changes in his prices in that card because his competitors made them. The testimony was given less than a half hour ago to that effect.

Trial Examiner Norwood: Can't he correct that?

Mr. MacIntyre: If it is given now as a correction of his statement; but if it is a duplication of testimony—

Mr. Gentholts: All right, I withdraw the question.

By Mr. Gentholts:

Q. Was there any change in the selling price of raw pipe on or about the time of the issuance of card 71 that had any effect with respect to the changes made in rigid conduit at that time?

A. Not that I know of.

Mr. MacIntyre: Just a moment.

I object to that as irrelevant and immaterial and as calling for a conclusion of the witness as to whether or not something affected something else.

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Trial Examiner Norwood: Read that question again.
(Question read.)

Trial Examiner Norwood: Now, you asked that
3427 question a while ago and withdrew it as to what his reasons were for changing his price, and he may tell that. If this question is confined to his reasons and his price and his costs there, he may answer.

I will overrule the objection.

By Mr. Gentholts:

Q. You may answer, Mr. Barton.

Mr. MacIntyre: To the pending question?

Trial Examiner Norwood: Yes.

Mr. MacIntyre: Or to the question as amended by your statement?

A. An examination of the card will show that there wasn't any change of price.

By Mr. Gentholts:

Q. Well, now, Mr. Barton, calling your attention to card 72, published by your company, pertaining to the sale of rigid conduit, issued on or about March 17, 1936, will you state whether there was any change in the selling price of merchant pipe that occurred on or about that time?

Mr. MacIntyre: That is objected to as calling for irrelevant and immaterial matter.

Trial Examiner Norwood: Overruled.

A. On the 6th of March there was a reduction of $11 a ton in the price of standard pipe, and the card 72 is dated March 17.

By Mr. Gentholts:

3428 Q. Now, Mr. Barton, with specific reference to card 72, there has been considerable testimony in the record about your company having reduced the price of conduit by approximately 25 percent and being the first one to publish card No. 72. Is that correct?

A. That allegation is not correct. Fretz-Moon did not reduce the price. Fretz-Moon openly quoted prices that they had encountered throughout the country at that time. We had been endeavoring to get some business at something near a profitable price and couldn't get it, and I authorized our salesmen to quote four and five off the card, which seemed to be about the bottom of the market. We

missed a little. Somebody else came out and knocked two and a half off that.

Q. Now, Mr. Barton, calling your attention to card No. 76, published by your company with respect to the sale of rigid conduit, issued on or about March 9, 1937, I will ask you whether there occurred a change in the selling price of merchant pipe on or about that time.

A. On the 6th of March, 1937, there was an increase of $10 a ton in the price of standard pipe.

Q. Now, with respect to card 77, Mr. Barton, your rigid conduit card, published on or about July 8, 1938, I will ask you whether a change occurred in the selling price of merchant pipe on or about that time.

A. On July 5th there was a reduction of $8 a ton
3429 in the price of standard pipe.

Mr. MacIntyre: It is understood that I have objections to all these questions on the price of pipe being changed as being irrelevant and immaterial—

Trial Examiner Norwood: Counsel may have the objections.

Mr. MacIntyre: —as if the same were made before the questions were asked.

Trial Examiner Norwood: Recess till 1:45.

(Whereupon, at 12:15 o'clock p. m., a recess was taken until 1:45 o'clock p. m. of the same day.)

3430 Afternoon Session.

1:45 P. M.

Trial Examiner Norwood: Come to order.

J. M. BARTON thereupon resumed the stand and testified further as follows:

Direct Examination (Resumed) by Mr. Gentholts.

Q. Mr. Barton, I show you Respondents' Exhibit 198-A and ask you to state what that form of contract represents?

A. This was a consigned stock contract that we used after Steel & Tubes took over the sale of Fretz-Moon conduit.

Q. And how long was this agreement used, Mr. Barton?

A. That agreement was used up until the alteration

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referred to, along about '38, in '38, when we altered the contract. I think it was in '38. Is that right?

Q. And the contract that was altered in '38 that you testify about is the one that you are using now?

A. That is the one we are using now.

Mr. Gentholts: We offer Respondents' Exhibit 198-A to C in evidence.

Trial Examiner Norwood: Any objection?

Mr. MacIntyre: I would like to ask the witness a question or two about it.

Trial Examiner Norwood: All right.

Examination on Voir Dire.

3431 By Mr. MacIntyre:

Q. Mr. Barton, referring to this Respondents' Exhibit 198, is that the contract that you used until Mr. Blake's contract form was put in use by you?

A. Well, I—I don't recognize that as Blake's contract, but it was—I think the one you are referring to you would call by that name, but I wouldn't.

Q. We are talking about the same thing, but I am trying to fix the period of time now.

A. All right. I see.

Q. That was about the end of 1936, wasn't it, or the early part of '37, if it has any relation to those minutes of meetings that Mr. Gentholts was talking about to you this morning? Can you refresh your memory on that and see if you can't fix the date a little more exact?

Mr. Gentholts: Mr. Examiner, there is no question about that. We will stipulate that this form of agreement was used until the so-called Blake contract was considered by Mr. Barton, as he has previously testified.

Mr. MacIntyre: And that was at about the end of 1936 or the beginning of 1937?

Mr. Gentholts: It wasn't that late, Mr. MacIntyre. It was in '37 some time. I don't—

Mr. MacIntyre: The first part of 1937. Are you willing to stipulate that?

3432 Mr. Gentholts: I think the record speaks for itself in that respect.

Mr. MacIntyre: You are willing to let the record show, in so far as 198 is concerned, that—

Mr. Gentholts: That is right.

Mr. MacIntyre: —its use was discontinued as of the date

shown by the record that the Respondents started their use of the so-called Blake form; is that correct?

Mr. Gentholts: Yes, that is all right.

Mr. MacIntyre: I have no objection to this.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBIT NO. 198-A, 198-B, and 198-C was offered and received in evidence.

The Witness: May I say a word in that connection? I can't?

Trial Examiner Norwood: Well, he will ask you a question.

The Witness: All right.

Direct Examination (Resumed) by Mr. Gentholts.

Q. Mr. Barton, in your previous testimony, in answer to one of Mr. MacIntyre's questions, you apparently protest against the use of the phrase "the Blake form of contract."

Do you have anything further to say in that respect?

3433 A. No, nothing more about that. I could say something more about the discontinuance of this and the adoption of the other.

Q. Well, is there any question as to the time of the discontinuance of the form of agreement that is introduced in evidence here as 198-A to C, inclusive?

A. These contracts were in force a long time after that, and I am under the impression—I can't say for certain, but I think there is still some of them in force. They weren't adopted by all jobbers.

Q. In other words, the so-called Blake form of agreement was not substituted in every instance, as far as your jobbers are concerned?

A. There were a good many protests from the jobbers from the use of that other form.

Q. And when those protests were received, what did you do about it?

A. There wasn't anything to do but let them use the old one.

Q. Continue to let them use the old form of agreement?

A. Yes. There wasn't enough changes vital in there to make any difference.

Q. Now, Mr. Barton, referring again to the memorandum that you brought with you this morning that is

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marked for the record Respondents' Exhibit 199, I will ask you to state what the various figures in typewritten statements that appear on this exhibit represent?

3434 A. Column 1 is the card numbers. Column 2 is the date on which these cards were adopted.

Q. Well, now, what cards do you refer to, Mr. Barton?

A. The conduit cards, price cards.

Q. All right.

A. Card—or column 3 is the price per 100 feet of one-half inch galvanized conduit. Column 4 is the jobber's discount. Column 5, which is marked "Net Return Per 100 Feet," that is not a correct caption. Column 5 here is the jobber's cost. That would be a correct statement there.

Q. And the pencil figures appearing on the extreme right-hand side of the exhibit, what are they?

A. That is jobber's cost per ton for half-inch conduit, galvanized conduit.

Q. And the figures appearing in the open space between the dates that are given on the left-hand side of the column that is marked "Card Price Per 100 Feet," what are those figures?

A. Those are the changes in the price of standard pipe on the dates indicated.

3436 By Mr. Gentholts:

Q. Mr. Barton, again, with respect to the subject of your price card, have you had any agreement or understanding with any of your competitors or the Respondents in this case pertaining to the publication of your price card?

A. No, we have not.

Q. Why do your price cards always bear the same number as the price cards published by your competitors covering the same period?

A. That is a matter of convenience to—to the trade. Quotations are always made either in writing or verbally, referring to a card number and a certain discount. That is universal in the conduit industry. Everybody that quotes, quotes card 84 less on, two, three, four fives, and everybody knows what they are talking about. If we had various cards, why, the jobber would have to tabulate all his bids before he would know what his prices were. It is a matter of convenience for the trade.

Q. Now, Mr. Barton, I direct your attention to
3437 questions asked you by Mr. MacIntyre at the time you previously testified with respect to a certain conversation you had with Mr. Williams of the Federal Trade Commission in June, 1940, and I will ask you now whether you ever stated to him that the drastic price cut which occurred in 1936 remained in effect until after the Organization Service Corporation became active in the Rigid Conduit Association?

A. I did not.

Q. Will you state whether you ever attended any meetings in which a Mr. Friend, or a Mr. M. B. Austin, were present?

A. I never saw either gentleman any place. Never heard of Friend until these proceedings started. I have on rare occasions heard Mr. Austin's name mentioned, but I never saw either gentleman.

Q. Now, Mr. Barton, as a manufacturer of conduit, with respect to the subject of cost, how much of your cost is represented by materials?

Mr. MacIntyre: I object as irrelevant and immaterial.

Trial Examiner Norwood: Objection overruled.

A. Seventy percent, on the average.

By Mr. Gentholts:

Q. How much is labor?

A. Nine percent.

Q. How much is fixed charges?

3438 A. Seven percent.

Q. And how much is sales and administrative expense?

A. Fourteen percent.

Q. Now, Mr. Barton, I show you Commission's Exhibit 533 and ask you whether you ever saw that before.

A. No, I don't know anything about that. I never heard of it until this proceeding started. I have heard something about it since. I never saw it.

Q. Do you know who prepared it?

A. I have no idea.

Mr. Gentholts: You may cross-examine.

Cross-Examination by Mr. MacIntyre.

Q. Mr. Barton, it is your testimony that Mr. Herbert S. Blake and the Organization Service Corporation were not employed by the members of the Rigid Steel Conduit Association before price advances had recovered the amount of the price cut which was evidenced by card 72?

A. I can't answer that. Without checking it up, I don't know. I make no connection between changes in price and the employment of Blake. I couldn't answer your question without searching the records. I can't do it.

Q. You don't have any recollection as to the dates on which either of those two events took place?

A. No. I certainly make no connection between
3439 one and the other; I can testify to that.

Q. If you can't recall the dates on which either of those events took place, or other circumstances concerning them now, how can you say they have no connection with each other?

A. Because I was present at the time. I know that without any connection between the dates and anything else. I know there was no connection between Blake and the change in prices.

Q. But you now say you have no recollection concerning these circumstances or the dates?

A. I have no recollection of the dates. The circumstances, yes, I have a recollection; I said I did. I can't tell you about the dates.

Q. And you can't even tell us the months?

A. Oh, I can tell you—no, I can't. I know when card 72 went into effect. That is about all I know. March 17.

Q. March 17, 1936?

A. 1936, yes.

Q. Do you recall attending a meeting in Pittsburgh with the members of the Rigid Steel Conduit Association just prior to the date on which card 72 went into effect?

A. Yes, sir.

Q. What was the date of that meeting?

A. About a week before. It must have been around the 11th, something like that.

3440 Q. About a week before?

A. About a week, I think.

Q. That is, about a week before March 17, 1936.

A. (The witness nodded.)

Q. And where was the meeting held?
A. Duquesne Club.
Q. In Pittsburgh?
A. In Pittsburgh.
Q. Now, name for the record just as many of the people that were present with you as you can and the names of the companies which they represented at that meeting.
A. Oh, I couldn't give you anything accurate on that. Walker of Walker Brothers was there, I think; I. A. Bennett, National Electric Products, I think, who was there part of the time; Collier of Steelduct, I think, was there; Quinn of Enameled Metals, I think, was there. Now, I say I think. I have no definite recollection just who was there.
Q. Your recollection is rather hazy?
A. Very hazy. I would have to—
Q. Who presided?
A. I can't tell you. I don't remember.
Q. Can you tell us what the presiding officer stated that the purpose of the meeting was when he opened the meeting?
A. I cannot. I don't remember.
Q. Who was there representing the General Electric Company?
3441 A. I can't tell you. I don't know whether there was anyone.
Q. Do you know whether Mr. Morrow was there?
A. I don't know.
Q. You don't have any recollection on that?
A. I don't have any definite recollection of that at all. He probably was, but I don't have any definite recollection.
Q. What time during the meeting did you go into it?
A. Ten o'clock in the morning.
Q. Was the meeting in progress when you entered?
A. I don't know. I don't remember.
Q. Had it broken up by the time you left?
A. Yes, it had.
Q. You are certain that it was completed when you left, but you are not sure whether it had started when you entered?
A. I remember when I left. I didn't leave until late that evening.
Q. What was the order of the subjects that were discussed?
A. I can't tell you. I don't remember.

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Q. How many other subjects that were discussed can you name for us now?

A. I can't name one. That is hard to remember. I can't do it.

Q. If your memory is that poor about that meeting, Mr. Barton, how is it that you could tell Mr. Gentholts on
3442 direct examination that a representative of the General Electric Company did not state at that meeting anything about putting in a lower price in order to penalize those who had been cutting prices off cards?

A. I don't think there was any such thing.

Q. How can you testify that nothing like that was said when your recollection is so hazy about everything else?

A. I did not testify to that, I don't think. I think the record will show that he asked me if I had any recollection of that, and I don't.

Q. In other words, what you told him on direct examination about that meeting you want to be taken as stating that you do not have recollections; is that correct?

A. I think that is what I testified.

Q. And nothing else?

A. That is right.

Q. Now, this matter of numbers on your cards corresponding with the numbers on the cards of your competitors which carry the same prices, you stated, was for the convenience of the trade in determining—in comparing prices.

A. That is right.

Q. Of yourself and your competitors; is that correct?

A. That is correct.

Q. It serves your competitors as a convenience in the same direction; doesn't it?

3443 A. Certainly. Certainly.

Q. You told Mr. Gentholts that you never know what your competitors are going to quote on a public letting. Do you recall that statement?

A. That is right.

Q. You know what their cards are before the opening; is that correct?

A. That is right.

Q. And if they adhere to their card, you know, therefore, what they are going to quote; is that correct?

A. I know—I don't know that they would adhere to it.

Q. But in so far as they do you know in advance, don't you, what they are going to quote?

A. I know what their published price is.

Q. And in so far as you adhere to your card, they know what you are going to quote?

A. That is right.

Q. Have members of your trade told you that it is more convenient for them to take your price cards, one of your adder books, and a sheaf of freight rate compilations and from such figure your delivered price quotations to them than would be the case if you told them directly what a delivered price to them at their station would be?

A. I haven't contacted the trade in that connection. I have never contacted them. They never told me that,
3444 and I haven't contacted them in that connection at all.

Q. None of your trade, then, has ever told you that your method of quoting prices on this basing-point system is any more convenient to them than any other method would be; is that correct?

A. Never discussed it with anybody in the trade.

Q. Why do you use the system, then?

A. The vast majority of my material is sold through consigned stocks, and it would be entirely impractical to sell it as f. o. b. mill and the jobber pay the freight, because there would be divided ownership in that stock. For legal reasons we must sell our consigned stocks on a delivered basis, so that we own all the material; no divided ownership.

Q. Is it your testimony now, then, that you found it absolutely necessary to sell on a basing-point pricing method in order to avoid difficulties concerning ownership of consigned stocks? Is that true?

A. I did not say that, no; I said on a delivered price, not a basing-point.

Q. My question, though, to which you gave that as an answer goes to why you use the basing-point system of pricing.

A. Well, I pointed out to you a while ago that Fretz-Moon is a very minor factor in the conduit industry, something less than 5 percent, and we naturally follow along like the tail of the dog. We just go along with them.

3445 Q. You just use the basing-point system in selling rigid steel conduit because your competitors use it, then; is that right?

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A. That is right. We started it for that reason and we continued it for that reason.

Q. What would you say concerning your ability to use any other method as long as your competitors use the basing-point method?

A. Well, I don't know what would happen.

Q. Ever try it?

A. It would be very, very confusing.

Q. Confusing to you and your competitors as to what the prices are; is that correct?

A. It would be confusing to me, too.

Q. And to your competitors also; wouldn't it?

A. It wouldn't make much difference to Fretz-Moon, very little difference, because I would say 99 percent of the material that is shipped carries a freight rate identical between Butler and Pittsburgh. If we were using Butler as a basing point, there would be very, very little change in what would happen. There might be some points that would not be profitable, and we would just throw them out.

Q. What did you mean it would be confusing to give up the basing-point system?

A. Well, if we give up the basing-point system, and everybody would give it up, there would be nothing 3446 but confusion left.

Q. What do you mean by that statement?

A. There would be a complete dislocation of the industry. Competition—

Q. How would a complete dislocation of industry be brought about in the rigid steel conduit industry if you and your competitors gave up the use of your basing-point method of pricing?

A. You would have to meet competition. You would be spotting mills all over the country.

Q. Where the freight would be less to destination?

A. Where the freight would be equal to your competitors'.

Q. That is, that would result in mills being placed closer to the points of use; is that correct?

A. No, I wouldn't say that.

Q. What would lead to the dislocation? What would cause that?

A. Competition. You would have to meet every mill that was there. If you want to sell in Philadelphia you would have to go and set up a plant alongside of Walker.

Q. And why would you have to, if you wanted to sell in Philadelphia, if you were not on the basing-point system, set up a mill alongside of Walker?

A. To meet Walker's competition.

Q. And why, Mr. Barton, would you have to do
3447 that to meet his competition?

A. Well, on account of the lower freight charges that would be involved.

Q. From that—

A. From Conshohocken to certain destinations.

Q. That is, into Philadelphia?

A. Yes, Philadelphia.

Q. You mean lower than would be the case from Pittsburgh to Philadelphia?

A. That is right.

Q. Is that what you mean?

A. That is right.

Q. And you say that would have to occur at a number of other locations also?

A. Many.

Q. Instead of having it as it is now with freight figured from Pittsburgh?

A. That is right.

Q. Is that correct?

A. That is right.

Q. Have the members of the traffic department of the Republic Steel Corporation, after they have checked your freight rates, at any time advised you to change your delivered price quotations at any destination?

A. Only in connection with an incorrect freight
3448 charge that would be all. If there had been a mistake in the freight charge, if it is a lower rate, and we get the higher rate, they would correct that.

Q. I again ask you if they advised you to correct the freight at any destination—

A. No.

Q. —after they made a check with your freight rates.

A. Not that I know of.

Q. Have they ever advised you to change your figure as to what delivered price quotations would be after they had made a check of your freight rate compilations?

A. Only in connection with an error in this particular rate to a specific destination. If we made an error, why, naturally, they would bring it to your attention. We wouldn't repeat the error.

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Q. Well, in instances where a rate, say, over the Pennsylvania Railroad from your plant to New York was higher than the rate from your plant to New York when New York Central was used for at least a part of the haul and your freight rate compilation showed the freight rate between your plant, or from Pittsburgh, say, to New York, in accordance with the Pennsylvania rate but showed nothing else, and it was correct in so far as it went, what did the Republic Steel traffic department tell you about that rate?

A. I don't know of anything that ever happened.
3449 I really am not acquainted with—with freight rates or traffic problems. I have never handled it. You get any into—asking questions about freight rates, why, I am absolutely—have to get a traffic man on that. I am not a traffic man.

Q. You do not know, then, whether in a situation such as that I have just outlined that they have advised you to use the rate which was shown therein as the Pennsylvania rate or some other one; do you?

A. No, I don't know that.

Q. Ever since you have been using the Donley service and the Donley freight rate compilations in figuring your delivered price quotations, you have known that your competitors were also using them; haven't you?

A. I knew some of them did. I didn't know—I don't think all of them did. I don't have any real knowledge of who was using them, but I knew certain—

Q. But you knew some were using them?

A. Naturally, they would.

Q. Now, you told Mr. Gentholts on direct examination that this consigned stock agreement form of yours, which you adopted after Blake had met with you at this meeting of November 20, 1936, merely preceded—I mean succeeded another stock agreement form—consignment stock agreement form, and you also told him at that time about adopting a specific building job contract form?

3450 A. That is right.

Q. What specific job contract form did you have previous to that time?

A. Practically the same as that submitted; some slight changes in it.

Q. Why didn't you submit it to your attorney so that he could put it in evidence here?

A. I said we did. I said we did.

Q. Has it been put in evidence?

A. I think so. When I told him, we said we handled it exactly as we did the consigned stock contract.

Q. All the papers that he has put into evidence are all on the table there. Will you pick out the one that you used as a specific job contract form prior to the time that you started to using the so-called Blake form?

A. I don't know whether there is one of them here or not.

Mr. Gentholts: Well, now, Mr. Examiner, I think—

The Witness: I don't know whether there is one here or not.

Mr. Gentholts: I think Mr. MacIntyre has the witness confused on the exhibits that have been introduced, and I object to the question.

Mr. MacIntyre: I really do believe that he is confused, but I have no other way of attempting to clear up the confusion except to ask him the question that I have
3451 asked in an effort to try to see whether or not that he did know or consider that one of these was specific job contracts.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: I frankly don't think one did go in.

(Question read.)

Trial Examiner Norwood: The witness may do so if he can.

A. I haven't seen one of those old contracts here. I haven't seen one that we were using prior to that.

By Mr. MacIntyre:

Q. In other words, you have not produced any such forms?

A. Not that I know of, no.

Q. Has your attorney had one of them?

A. I don't know whether he has or not. Ask him.

Mr. MacIntyre: Have you one, Mr. Gentholts?

Mr. Gentholts: Yes. I will be glad to introduce it when you are finished. I overlooked it.

By Mr. MacIntyre:

Q. What sales of rigid steel conduit had Steel & Tubes, Inc., made prior to the time that Fretz-Moon entered into the contract with it in 1934, as is evidenced by Respondents' Exhibit 196?

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A. None. I think none.

Q. How is it, then, that you told Mr. Gentholts on direct examination that you selected them for your
3452 agents because of their success in the handling of conduit?

A. They were selling e. m. t., this light-wall conduit.

Q. But had never handled any rigid steel conduit?

A. Never handled any rigid conduit. Rigid conduit supplemented the light wall.

Q. In other words, they were going into a new field at the time?

A. They have been in the field a number of years, this e. m. t., light wall.

Q. But they were going into a new field with rigid steel with you?

A. That is right.

Q. First time they handled it at all?

A. That is right.

Q. I believe you told Mr.—strike that.

Is it a fact that Fretz-Moon Tube Company determine the selling prices, and has determined the selling prices to be observed, and which are observed by Steel & Tubes, Inc., and the Steel & Tubes Division of Republic Steel Corporation?

A. Entirely; yes, sir.

Q. Is that done in the manner that you have outlined to Mr. Gentholts on direct examination?

A. I don't know just what you refer to.

Q. Well, in the manner in which Fretz-Moon determines the prices at which its products are to be sold.

3453 A. We advise Steel & Tubes what price they can sell at.

Q. And you have done that, as you have outlined to Mr. Gentholts on direct examination?

A. I don't know just what outline you refer to to Mr. Gentholts.

Q. Why did you and Mr. Bennett seek to have Mr. Blake prepare this consigned stock agreement form?

Mr. Houston: I object to that question. I don't think that there is any testimony that this witness gave on his direct that Mr. Bennett had anything to do with it.

Mr. MacIntyre: The record is clear on that as to his approach—in fact, Mr. Blake has testified that Mr. Barton and Mr. Bennett went to see him.

Mr. Stewart: About what?
Mr. MacIntyre: In August, '36.
Mr. Stewart: Not about anyone's—
Trial Examiner Norwood: Read the question.
(Question read.)
Trial Examiner Norwood: Did you and Mr. Bennett do that?
The Witness: No. No, we did not.

By Mr. MacIntyre:

Q. You and Mr. Bennett went to see Mr. Blake in the late summer, 1936?

Mr. Gentholts: Now, Mr. Examiner, this is clearly
3454 beyond the scope of the direct examination. There has been some testimony on this general subject during the course of this hearing by other witnesses, but this witness has not testified in this respect at all. I object to the question.

Mr. MacIntyre: Well, of course, this question was not asked, but Mr. Gentholts did ask this witness as to whether he had had any agreements with his competitors concerning these different practices, including this one, and, of course, I have an objection, a standing objection, against such questions. I feel that we ought to get at the facts, which I am now attempting to do.

Trial Examiner Norwood: Go ahead. I will overrule your objection.

Mr. Gentholts: Do you remember the question, Mr. Barton?

The Witness: No. Read the question.

(Question read.)

A. Mr. Bennett and I interviewed Blake looking toward the employment of the Organization Service Corporation to handle the affairs of the Rigid Steel Conduit Association. That is the only time Bennett and I ever collaborated in anything.

By Mr. MacIntyre:

Q. Who asked you to go along with Mr. Bennett to see Mr. Blake about that?
3455 A. I don't know whether Bennett asked me or I asked Bennett.
Q. Well, who asked the two of you to go?
A. I don't know as anybody asked us.

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Q. In other words, you and Mr. Bennett just assumed the burden of going up to see Mr. Blake and to employ him for the Rigid Steel Conduit Association?

A. The probabilities are that I told Bennett about the Organization Service Corporation. I might have done that. Bennett went along with me to see who this man Blake was.

Q. And to find out if he would go to work for the Rigid Steel Conduit Association?

A. Yes.

Q. And then you and Mr. Bennett reported back to the Association what you found out?

A. That is right.

Q. During the course of a meeting?

A. I think so.

Q. That is, to all the members?

A. That is right. All that were present.

Q. Where did you first hear about Mr. Blake?

A. I don't know. I am acquainted—have a pretty wide acquaintance with the various steel industries, the seamless tube business and the die and tap people. I heard of Blake through business associates. That is where I heard of him.

Q. In other words, some business associate of the 3456 iron and steel industry—

A. That is right.

Q. —tipped you off to Mr. Blake?

A. That is right.

Mr. Gentholts: Oh, I object to that.

Q. Is that the fact, Mr.—

Trial Examiner Norwood: Objection overruled.

A. What do you mean, tipped me off?

Q. Well, informed you about him?

A. Yes. Recommended him.

Q. Is it your testimony, Mr. Barton, that you never attended a meeting of members of the Rigid Steel Conduit Association where the subject of jobbers was discussed?

A. That is my testimony.

Q. Is it your testimony now that you don't recall having done so, or that you are positive about that?

A. I don't know what you mean, whether—discussing jobbers in what connection?

Q. Well, in any connection.

A. Naturally, you would talk about a jobber at a meeting; you would talk about the distributor; you would mention jobber. You wouldn't be afraid to say "jobber" at all.

Q. Now, when you said "jobber" what did you say about "jobber"?

A. (Laughter.) Well, I don't know. We said
3457 lots of things that weren't complimentary sometimes.

Trial Examiner Norwood (Rapping for order):

The Witness: I beg your pardon.

By Mr. MacIntyre:

Q. This meeting of November 20, 1936, to which Mr. Gentholts called your attention, shows that some discussion took place about the use of these consigned stock arrangements with jobbers. Do you recall anything about that?

A. What is the date of that?

Q. November 20, 1936.

A. No. I don't identify that.

Q. You don't recall anything about that meeting?

A. No.

Q. Or what was mentioned about jobbers there?

A. No.

Q. Or why that you and other members of the Rigid Steel Conduit Association desired work done on your consigned stock agreement forms in connection with your transactions with jobbers? You don't recall that?

A. I recall discussions of why we wanted some work done on consigned stock agreements with jobbers.

Q. And you recall discussions on that?

A. That is right. Those problems were discussed.

Q. Now, why did you want that work done on those contracts?

A. There were new factors introduced into the
3458 picture at that time, and one of the principal factors was the Robinson-Patman Act, and the jobbers could get us into trouble in connection with that Act.

Q. And was it your understanding of the Robinson-Patman Act that it presented to you a problem of—that is, as to you and your competitors, a problem of all of you having a uniform consigned stock agreement?

A. No. No. It was only my problem, not my competitor's. I didn't have to align myself with my competitors. I had to take care of my own self.

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Q. In other words, you and your competitors didn't consider that the Robinson-Patman Act required you and they to hire Mr. Blake to run off a uniform consignment stock agreement in order for you to comply with the provisions of the Act; is that correct?

A. I don't think it did, no.

Q. On the table there is a photostat of Commission's Exhibit 621. Will you please look at the date of it?

A. Is this it?

Q. Yes.

A. No mark on it.

Q. What is the date of that?

A. March 9, 1939.

Q. March 9, '39?

A. May. May. May 9, 1939.

3459 Q. Is it your testimony that prior to that date you had not been receiving as much as $5 per ton for your conduit than you were on that date receiving?

A. That is right. That is my testimony.

Q. Is it your testimony that you had not previously quoted there prices on your cards $5 per ton higher than you were at that time, May 9, '39, quoting on your card?

A. That is my testimony.

Q. You were named a member of the board of directors of the Rigid Steel Conduit Association on November 12, 1936, according to your testimony this morning. Is it now your testimony that you never served on a committee of the Rigid Steel Conduit Association prior to the time you became a director?

A. I don't remember serving on any committee, not unless it was a technical committee, and I don't know—I don't believe the technical committee—or the standardization committee. I don't believe that that committee antedated that date. I believe it was after that.

Q. In other words, you just don't recall whether you were on committees or not prior to that time?

A. I don't think I was. I don't recall.

Q. You represented your company and its membership in the Association for a period of time—that is, considerable period of time prior to November 12, 1936?

A. Yes.

3460 Q. And did so in the course of meetings; is that correct?

A. That is right; yes, sir.

Q. Now, on direct examination you told us quite a lot about the changes in the prices of steel pipe and the dates on which they occurred. Why didn't you make your price changes on the dates and in accordance with the changes in the steel pipe—changes in the prices of steel pipe?

A. Why didn't I?

Q. Yes.

A. The changes in the price of steel pipe didn't directly affect Fretz-Moon Tube Company.

Q. Why?

A. We fabricate our own pipe.

Q. In other words, the price of steel pipe didn't affect your ability to sell conduit at one price or at another, in so far as other people were charging different prices for steel pipe; is that correct?

A. Generally the change in the price of steel pipe was accompanied by a change in the price of skelp from which the pipe is fabricated, and it would have affected our ability, that is, our pipe would have cost us more.

Q. You didn't prepare yourself to testify here today concerning the changes in the prices of skelp, though; did you?

A. No, I haven't.

Q. You don't know anything about that?

3461 A. No. I would have to look that up.

Q. But the conduit that you manufacture doesn't require that you go out on the market and buy any steel pipe; is that right?

A. We do purchase—over 2½ inch we purchase from the outside.

Q. But for manufactured conduit below 2½ inches you do not have to go on the market to buy any pipe?

A. We fabricate our own.

Q. Well, from whom do you buy the pipe of 2½ inches and over?

A. The Spang Chalfant, principally.

Q. Another one of the Respondents in this case?

A. That is right.

Q. Now, you told us this morning that just prior to your issuance of card 72 you had found that there had been considerable price cutting. Do you recall that?

A. Yes, sir.

Q. You didn't find that that price cutting was all of the same amount at each and every place throughout the country; did you?

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A. Oh, no.
Q. It varied—
A. Varied.
Q. —from just a little off the card down to how
3462 far below the card?
A. Four fives. Four fives is as low as we found.
Q. And four fives off the card 71 would make what percentage off the card?
A. Approximately twenty; not quite.
Q. Say about 17 to 18 percent?
A. Seventeen to eighteen; nineteen percent.
Q. In some instances sales were being made at the card 71, and some 5 percent off and some 10 percent off; is that correct?
A. I don't remember many on the card in those days. All off the card. There would be some sales on card, but not many.
Q. But you couldn't tell what the quotations of other people were?
A. We never knew what to quote.
Q. Did you hear other representatives of rigid steel conduit manufacturers express the same thought before card 72 was issued?
A. I did.
Q. If there is an increase of $7 per ton in the price of steel pipe, one-half inch, how much would that increase your cost in the manufacture of 100 feet of one-half inch rigid steel conduit?
A. About $7.50. You would have some loss, you know. You don't get a hundred percent.
3463 Q. In other words, it would increase your cost by $7.50?
A. Increase my cost of pipe about $7.50. I would have to look that up, but it would be about $7.50. If you got a hundred percent practice, and every foot of pipe you bought was fabricated into conduit, and you had no loss, then your increase in the cost would be $7, but you have a certain loss which must be absorbed, and that means a greater increase than the $7.
Mr. MacIntyre: Will you please read my question again? I think the witness thought I was talking about a ton of rigid steel conduit.
(Question read.)
A. Well, I would have to figure that out.

By Mr. MacIntyre:

Q. You understood my question to be in tons?

A. I understood it to be in tons; yes, sir. Something we could think about. If you want to get it in feet we will have to take the tons and divide it by 2,350 feet and get it all back.

Q. In other words, you have 2,350 feet of one-half inch pipe per ton?

A. Approximately, yes.

Q. And in the manufacture of the conduit you would probably waste 50 cents worth of the pipe; is that correct?

A. That's right.

3464 Trial Examiner Norwood: We will have a five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Have you issued any price card since you published your card 84 on January 15, 1941?

A. No, we have not.

Mr. MacIntyre: I believe that is all.

Redirect Examination by Mr. Gentholts.

Q. Mr. Barton, with respect to Mr. MacIntyre's cross-examination on the subject of the March 11 meeting at the Duquesne Club in Pittsburgh, I want to ask you specifically, did Mr. A. E. Newman, or anyone else on behalf of the General Electric Company, state that if further nibbling continued a price reduction would be made?

A. I heard no such statement. Neither have I ever heard anybody say that they heard the statement.

(A document was thereupon marked for identification "Respondents' Exhibit No. 200-A to 200-D.")

Trial Examiner Norwood: Excuse me a minute or two.

(Pause.)

Trial Examiner Norwood: Go ahead.

By Mr. Gentholts:

3465 Q. Mr. Barton, again on the subject of the March 11 meeting at the Duquesne Club, if I show you the minutes of that meeting, would it refresh your recollection as to who was present?

A. It probably will—may.

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Q. I believe you testified that you were not sure as to whether Mr. Newman was present (showing a document to the witness).

A. No, I was not. I am still not sure. Although without a doubt, why, the names on here are correct. I am very much surprised to find Mr. Hodkinson's name on there. I certainly would not have guessed that he was there.

Q. How about Mr. Bennett? You thought that he was at the meeting.

A. I thought Bennett was, but it don't appear that he was. The man Whitney—

Mr. MacIntyre: What is he looking at?

Mr. Gilpatric: Commission's Exhibit 7.

By Mr. Gentholts:

Q. Now, Mr. Barton, calling your attention to Respondents' Exhibit 200-A to D, inclusive, I will ask you to state what this is.

A. This is a specific building contract used by Fretz-Moon Tube Company in connection with rigid steel conduit. This was used up until the alteration in '36 or '38.

Q. Until the new form was adopted in 1937?

3466 A. In 1937.

Q. Is that what you are talking about?

A. That is right.

Q. Now, how long had it been in use—this form of contract?

A. This form was in use when I went with Fretz-Moon. It is a copy of a specific building contract used in connection with standard pipe.

Q. Then, you used this form of specific building contract for other products other than rigid conduit?

A. Yes, we did.

Q. And it was in use before 1929?

A. Yes, sir.

Q. By the Fretz-Moon Company?

A. Yes, sir.

Mr. Gentholts: We offer this exhibit in evidence.

Mr. MacIntyre: Is it offered for the contract form or for the form and the contract?

Mr. Gentholts: Solely for the contract form.

This form, Mr. Examiner, was taken from the files. It happens to be a contract that had been used on a specific job, and is the only form that I have.

Mr. MacIntyre: In other words, you are not offering anything in type or pencil or the ink written statements on there which go to make up the contract?

3467 Mr. Gentholts: Well, we might as well offer it for the agreement that this particular contract covers. It shows the price of the conduit sold at that time under this particular contract.

Trial Examiner Norwood: You offer it as a complete contract?

Mr. Gentholts: That is right.

Mr. MacIntyre: Unless the witness is prepared to give further information on the contract, I will object to it; but I would have no objection to the form being received.

Trial Examiner Norwood: If it is received you shall cross-examine him on the document.

Mr. Gentholts: If Your Honor please, if this witness cannot give additional information with respect to the contract, Mr. Benfield, who will testify before this proceeding is over, will be able to furnish all of the detailed information with respect to the agreement.

Trial Examiner Norwood: Well, I will overrule the objection and receive the agreement with that understanding.

What is the number of it?

Mr. Gentholts: 200-A through D, inclusive.

RESPONDENTS' EXHIBITS NOS. 200-A to 200-D were offered and received in evidence.

Mr. Gentholts: That is all.

Recross Examination by Mr. MacIntyre.

3468 Q. When was this contract entered into, Mr. Barton?

A. This contract?

Q. Yes; the contract which is shown on Respondents' Exhibit 200.

A. December 17, '35, is the date on it.

Q. December 17, 1935?

A. That is right.

Q. And shipments were started under that contract on what date?

A. No. No. That would not be indicated here.

Q. But the price at which you committed yourself to furnish conduit under that contract was given to the pur-

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chaser and the committal was made to the purchaser on that price on December 17, 1935; is that correct?

The Witness: Read the question again. I did not get it all.

Trial Examiner Norwood: Read it.

(Question read.)

A. Yes. That is right.

By Mr. MacIntyre:

Q. Now, on redirect examination you told Mr. Gentholts that a particular statement which he read to you was not made by a particular person at this meeting of March 11, 1936, which you attended in this club at Pittsburgh. How are you so positive, Mr. Barton, that that statement 3469 was not made, and yet you can't remember the names of the people who attended the meeting or the agenda of the subjects which were taken up at the meeting?

A. Didn't I say I heard no such statement?

Q. Well, how are you so positive that you did not hear such statement and yet you cannot tell us what you did hear in the way of an agenda of subjects discussed at the meeting?

A. A statement of that nature would be of such vital interest to our company I certainly would not forget that if I had heard it.

Q. You would not forget that one, but you have forgotten all the others; is that correct?

A. Most of them. I guess I forgot them all. I don't remember any of them.

Mr. MacIntyre: That is all.

Mr. Gentholts: That is all.

Trial Examiner Norwood: The witness is discharged.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. King: If Your Honor please, at this time I would like to call Mr. Hula, if I may, with the understanding that, subject to Your Honor's pleasure, that I might have a five-minute recess at 4 o'clock to make a long-distance telephone call.

Trial Examiner Norwood: All right.

3470 ROBERT HULA was thereupon called as a witness for the Respondents, and, having been previously sworn, testified further as follows:

Trial Examiner Norwood: Your full name, please?
The Witness: Robert Hula.
Trial Examiner Norwood: You were sworn before?
The Witness: I was sworn at Pittsburgh.
Trial Examiner Norwood: That is right. Have a seat.

Direct Examination by Mr. King.

Q. Mr. Hula, you testified before in these proceedings; is that correct?

A. I did at the Pittsburgh session.

Q. At that time you gave your name as Robert Hula and your position as vice-president of Respondent Clayton Mark & Company.

A. That is correct.

Q. Will you give us the date of incorporation of Clayton Mark & Company?

A. It was in 1924 that the company was organized and incorporated under a charter issued by the State of Illinois, and subsequently transferred to the State of Delaware, so we are operating under a Delaware charter.

Q. At the present time?

3471 A. At the present time.

Q. Will you briefly describe the business of Clayton Mark & Company?

Mr. MacIntyre: Pardon me. May I have that last answer?

(Answer read.)

Mr. King: Do you want the pending question read?

The Witness: No. I think I have it.

A. Clayton Mark & Company have offices at 1900 Dempster Street, Evanston, Ill., and are engaged in the manufacturing business, producing electric welded and mechanical tubing, electric welded conduit; also engaged in the fabrication of wrought steel pipe, manufacture of miscellaneous water well supplies, and forged steel unions, and presently employ approximately 600 men.

Prior to October 12, 1938, Clayton Mark & Company were in substantially the same business and operated a

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plant at Seventy-fourth and Damen Avenue in the City of Chicago, at which plant they produced rigid steel conduit, beginning late 1924 to about October 15th or November 1, 1938, at which time they discontinued the manufacture of rigid conduit and have since that date been purchasing its requirements from outside sources.

By Mr. King:

Q. Now, Mr. Hula, do you know of your own
3472 knowledge whether or not Clayton Mark & Company was ever a member of the Rigid Steel Conduit Association?

A. Yes, it was.

Q. Will you please state when it became such a member?

A. I do not recall the exact date, but my recollection is some time around April, 1934.

Q. How long did your company continue to be a member of the Association?

A. We tendered our resignation the latter part of October, 1938, to become effective December 31st, since we had some financial obligations under our form of membership to that date.

Q. After that date did Clayton Mark & Company have any further participation in the affairs of the Association?

A. We did not.

Mr. King: Now, if Your Honor please, I thought that Mr. Hula was going to testify tomorrow morning instead of this afternoon, and I have a letter signed by him resigning on behalf of his company from the Association. It is a letter of Clayton Mark & Company written by Mr. Hula. May I, with Mr. MacIntyre's permission, produce that tomorrow or at a subsequent date and offer it?

Do you have any objection?

Mr. MacIntyre: I have no objection to your offering it later.

3473 By Mr. King:

Q. Did you yourself write the resignation of Clayton Mark & Company from the Association, Mr. Hula?

A. I did.

Q. And have you delivered to me a carbon copy of that letter?

A. Yes, I believe I did.

Q. I believe you already testified that as soon as Clayton Mark & Company was organized in 1924 they began a rigid conduit business. Is that correct?

A. We established the Chicago plant in the early part of 1924 and finished the construction and equipment so that we were prepared to actually manufacture rigid conduit in December, 1924.

Q. Were you with the company at that time?

A. Yes, sir; I was.

Q. Now, when you entered the conduit field did you find any competition existing?

A. We encountered the keenest kind of competition upon our entry into the conduit business particularly, to the extent that we discovered most of the manufacturers of conduit were extending consigned stock accounts to the jobbing trade. When we were previously in the conduit business it was our custom to sell conduit on an open sale arrangement, but naturally when we reentered in '24
3474 and '25 and encountered the consigned stock arrangement in effect we had considerable difficulty obtaining outlets for our distribution, and naturally were very reluctant to adopt any consigned stock contract, because it required substantial financial lay-out to carry these stocks.

We had several or many meetings by the officers and employees of the company over a period of time and decided that we would do everything possible to promote the sale and distribution of our rigid conduit by methods other than consignment, if it were possible to do so.

About 1925, the early spring of 1925, we conceived the idea that to meet the competition of consigned stocks we would offer to the jobber and the wholesaler the opportunity to purchase outright any material that he required by contract, which stipulated that they would have the privilege of taking 90-day terms, at the end of which period they would be permitted to take the 5 percent cash discount. That was primarily done to assure us of a satisfactory turnover. It was, in fact, an extension of credit for a period of 90 days in lieu of the consigned stock. And shortly afterwards we made further revisions—I do not recall the dates—granting the jobber the privilege or option of paying his account on open purchase within 10 days after date of shipment and taking a further discount of one-half percent per month for the so-called 90-day period, which would have given him an additional
3475 1½ percent cash discount in addition to the regular 5 percent cash discount in lieu of a consigned stock agreement.

Now, there were many instances where—

Mr. MacIntyre: Now, just a moment.

I object to further discourse on this. I did not object when it started. I did not know it was going to run into such discourse.

In the first place, it is irrelevant and immaterial. The charges in the case go to the actions of these Respondents in working out in concert, which the evidence shows that they did, the agreement forms which have, since they were worked out, been so used. Now, of course, to go back into the history of some activities indulged in before those things were done cannot and does not meet the showing made to the effect that they did concertedly act as of and after a particular date.

Mr. King: Well, do you object to it because it is a discourse? Is that my understanding of your objection?

Mr. MacIntyre: Well, it is—

Trial Examiner Norwood: I think that he has a right to show his method here. You are trying to show that he employed certain methods. He is telling about his methods.

Objection overruled.

The Witness: If I am not privileged to state the whole story and bring it down to date you won't get a true
3476 picture of the situation.

Trial Examiner Norwood: There is no use of your saying that. Let your lawyer do this.

Go ahead.

Mr. King: Do you want some read to you so you can pick up?

The Witness: Just pick me up at the last sentence there.

(Record read.)

Trial Examiner Norwood: Go ahead.

A. (Continuing.) —we also worked out an exclusive agent distributor contract assigning certain territories to individual distributors.

Trial Examiner Norwood: Now, when was that?

The Witness: That was from the period in 1925 to 1930.

I might state for the record that we gave an extra 5 percent to the wholesale distributor for the exclusive territory with the idea that he would use that 5 percent to defray advertising expense and selling effort to promote the sale of our conduit.

At the end of 1930 that arrangement was discontinued. We felt warranted in discontinuing that arrangement because we had built up a satisfactory volume of distribution, and we continued to follow the general policy of
3477 selling on an open sale arrangement rather than upon a consigned stock basis, although we did in some cases feel obliged and compelled to extend consigned stock accounts to a few customers who we could not otherwise obtain.

By Mr. King:

Q. Has that been your practice down to the present time?

A. That has been the practice up to the present time.

Q. In the few instances you referred to where you were forced to sell on the consigned basis, did you do so pursuant to any understanding or agreement with any other manufacturer?

A. Positively not.

Q. Do you know of any other manufacturer which operated along the lines that you have just mentioned?

A. I have never heard of any other manufacturer operating on the same basis that we did.

Q. Now, Mr. Hula, to your knowledge, did Clayton Mark ever make any attempt to dictate resale prices?

Mr. MacIntyre: Now, I object to that. It calls for a conclusion. Let us find out what he did, and the Commission and the courts can determine whether it amounts to a dictation of the prices.

Trial Examiner Norwood: Objection overruled. Go ahead.

A. As outlined in the previous statement, I think it speaks for itself. Having sold the material to the
3478 jobber, we could not, if we wanted to, dictate the resale price.

Trial Examiner Norwood: How about these who received their goods on consignment?

The Witness: We made no effort to dictate or dominate the resale to those sold through consignment.

By Mr. King:

Q. Now, Mr. Hula, when Clayton Mark & Company began business in 1924 did they encounter any other difficulties in connection with the sale of conduit than those you have already described?

A. We encountered considerable difficulty in merchandising our product, particularly on the West Coast and in the Southwest markets, due to an inequitable freight rate adjustment prevailing from Chicago both via all-rail routes and via the Panama Canal in contrast with the competitive rate situation prevailing from Pittsburgh via rail and water through the Panama Canal, and until we—

Mr. MacIntyre: Now, I object to the question. I didn't —it was so indefinite I didn't know what it was calling for until the witness started to answer. It is clear now that it calls for and it is getting an answer specifying the hard luck that the company ran into because it located its plant somewhere where it shouldn't have. That is irrelevant and immaterial, as to the use of bad judgment on the part of these people in attempting to sell from some place 3479 instead of selling from some other place in the country.

Trial Examiner Norwood: Objection overruled. Proceed.

A. (Continuing.) The difficulty was—

By Mr. King:

Q. Do you want the question read?

A. No.

The difficulty was alleviated after we had successfully obtained and negotiated a satisfactory rate adjustment in connection with the rail line running from Chicago to New Orleans, thence in connection with the Redwood Steamship Line—

Trial Examiner Norwood: Now, I don't think you need go into the details there. Just show the matters that affect your method, the way you did some business.

The Witness: Well, this is important—

Trial Examiner Norwood: Well, you need not tell us the details of it. Tell us what you did as a result of the freight rate disadvantages, and so on.

The Witness: Well, Your Honor, I don't want to burden the record, but it does have a bearing on the element of competition that we encountered with the eastern producers.

Trial Examiner Norwood: Well, you will have to come directly to the point, or I shall require him to ask questions.

Go ahead.

By Mr. King:

3480 Q. Mr. Hula, did you alleviate this difficulty?

A. We did.

Q. And how did you alleviate it, just briefly?

A. By obtaining a rate rail and water to the Pacific Coast on a comparable equality with the rate from Pittsburgh via water.

Q. And that was done in connection with negotiations and contests with the railroads; is that correct?

A. That is right.

Mr. MacIntyre: I object.

Trial Examiner Norwood: I think counsel should not lead this witness.

Mr. King: I was just trying to hurry the matter along.

Mr. MacIntyre: We can hurry it along considerably by having Mr. King simply complete the testimony.

Trial Examiner Norwood: Go ahead. This question and answer may stand.

Go ahead.

By Mr. King:

Q. Now, Mr. Hula, I believe you testified at a prior time that your duties as vice-president gave you general knowledge of and supervision of the sale of products of Clayton Mark; is that correct?

A. That is correct.

3481 Q. Now, do your duties—strike that.

Are you familiar with the revenues and costs—

Mr. MacIntyre: I object.

Q. —of your company?

Mr. MacIntyre: It is irrelevant and immaterial as to whether he is familiar with the costs of his company or not. He is probably familiar with lots of other things about the company—

Trial Examiner Norwood: Overruled.

Mr. MacIntyre: —and that are not useful here.

A. It is my duty and responsibility to be familiar with the costs and net realized prices on conduit that we sell.

By Mr. King:

Q. Now, Mr. Hula, will you tell us, if you know, whether or not your company made a profit or a loss in the manufacture and sale of rigid conduit from 1935 to 1938?

Mr. MacIntyre: I object.

Trial Examiner Norwood: Sustained.

Mr. King: If Your Honor please, I think that is pertinent as the most prime kind of evidence to rebut the charges which we are called upon to meet, and I would like to make an offer of proof, if I may.

Trial Examiner Norwood: Go ahead.

Mr. King: I offer to prove through Mr. Hula that in 1935, the Respondent, Clayton Mark & Company,
3482 realized a small profit in the sale of rigid steel conduit; that from '36 to '38, inclusive, it sustained a loss; that it discontinued the manufacture of rigid steel conduit in 1938, but that despite this fact thereafter it still continued to sustain a loss.

Trial Examiner Norwood: The testimony is rejected and the counsel has his exception.

By Mr. King:

Q. Now, Mr. Hula, will you describe why Clayton Mark ceased to manufacture conduit?

A. There were several reasons why we ceased, first, due to the fact that we reorganized and dismantled the plant in Chicago proper in October, 1938, acquired a new plant at Evanston at that time. The necessity of moving all the equipment delayed the construction of the rigid conduit department and during the interim there were some labor increases and other conditions which made it appear unwise for us to resume the manufacture of rigid steel conduit.

Q. And you have not resumed such manufacture since 1938; is that correct?

A. That is correct.

Q. Now, Mr. Hula, when you testified as a witness for the Commission in Pittsburgh, in response to a question from Mr. MacIntyre, you stated—

Mr. MacIntyre: Now, I object to tell him what he testified to at Pittsburgh.

3483 Mr. King: For goodness sake, how am I going to ask him a question about it if I don't tell him what it is?

Mr. MacIntyre: Ask him what the facts are on the point.

Mr. King: I am entitled to refer him to a particular statement in the record.

Mr. MacIntyre: I disagree with that thought.

Trial Examiner Norwood: Do you want an explanation of his previous testimony?

Mr. King: A brief one, yes, in response to a question by Mr. MacIntyre.

Trial Examiner Norwood: All right. Objection overruled.

Mr. King: Would you mind reading me the question?

(Question read.)

By Mr. King:

Q. (Continuing.) —that, in your opinion, Clayton Mark & Company had been influenced somewhat by a carry-over of the influence of the National Industrial Recovery Act. Now, will you explain what you meant by "carry-over of influence"?

A. There were several factors that compelled me to make the statement, referring to the influence of the N. R. A. Act, after the Supreme Court had dissolved the Act itself, namely, the increased rates of labor, the overtime working conditions, all of which increased cost and made it less
3484 desirable to deviate from the then published card prices.

Q. Now, was the increase in labor costs considerable, Mr. Hula?

3485 A. There were several wage rate increases from the time N. R. A. was dissolved up to the present time. If I recall correctly, in the fall of 1933—

Mr. MacIntyre: Now, I object to going into a discourse on that.

Trial Examiner Norwood: Now, I have already ruled on that. Please let the witness answer the question. Go ahead.

3486 A. There was a 12½-cent per hour increase in common labor rates. Then in 1936, early in 1936, the Steel Corporation made a contract with the C. I. O. which granted a 12½-cent per hour increase, and again as late as this spring there was a 10-cents-per-hour increase in common labor rates granted to steel manufacturing concerns, and we followed all the way up, until today our common labor rate is 72½ cents per hour as contrasted with a common labor rate of 40 cents in 1933.

Q. Now, Mr. Hula,—

Mr. MacIntyre: Now, if Your Honor please, I move that the witness' answer be stricken. It has been put into the record under the claim that it was explaining a statement made by this witness in Pittsburgh as to the influence on the Clayton Mark Company by the carry-over of the influ-

ence of the N. R. A. Act, and he, in connection with his answer, and in his answer, has stated something about a wage increase which he states has taken place during the spring or summer of 1941. I think that that in itself is perfectly clear that it has no connection with what counsel stated he was setting out to show.

Trial Examiner Norwood: No. The motion is denied. Proceed.

By Mr. King:

Q. Mr. Hula, did you, or, to your knowledge, did anyone connected with your company, discuss the question of prices with your competitors?

3487 A. No, sir; I did not.

Q. Mr. Hula, is Mr. Wyman now employed by your company?

A. No, sir. He has not been employed since October 15, 1938.

Q. Mr. Hula, did your company publish a card No. 79 or 82?

A. No, sir; we did not.

Q. Why not?

A. We saw no necessity for publishing a card, since the market was in an upset condition.

Q. Do the dates given on the various cards of Clayton Mark & Company, now in evidence, reflect the actual period when the cards were effective?

A. I would answer that question by saying that some of them do reflect the actual dates when they became effective, but in a good many instances there probably is a lapse of a week to ten days, and in some cases more than that.

Q. Mr. Hula, are you familiar with the freight schedules, which are in evidence in this cause, used by your company?

A. I have a general knowledge of them, yes.

Q. You have had some experience in traffic matters; have you?

A. I have.

Q. What disposition do those freight schedules make of fractions in a rate?

A. You mean the freight schedule as published by the Conduit—

Q. Yes, sir.

A. —Association, or whoever, is responsible?

3488 Q. Yes, sir.

A. I don't think they make any disposition of fractions. In the first place, there are no fractions, except during emergency periods when there might be a general advance made in rates, which is subsequently adjusted by the tariff issuing agents to the nearest half or whole cents. There may be some instances, however, where fractional freight rates may enter into a computation. I believe I recall where the rates to some Florida points are stated in cents per hundred pounds plus a per-car charge rate, in which event the fraction would be self-apparent if it were equated into a given quantity of material.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Recess until 10 o'clock tomorrow morning.

(Whereupon, at 3:55 o'clock p. m., December 18, 1941, the hearing in the above-entitled matter was adjourned.)

3491 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on yesterday, the hearing in Docket 4452 is reconvened in Room 332, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., on the 19th day of December, 1941.

Please note the appearances.

Mr. Robert Hula resumes the stand for further examination.

ROBERT HULA resumed the stand and testified further as follows:

Trial Examiner Norwood: Proceed.

Direct Examination (Continued) by Mr. King.

Q. Mr. Hula, at the adjournment yesterday I believe we were discussing the question of the disposition of fractions by the freight schedules. What disposition is made of those fractions?

A. As I understood the previous question, it had refer-

ence to the disposition of fractions in the Donley Freight Schedule.

Q. That is correct.

A. I stated that there were no dispositions of fractions made by any actual freight rates published. They
3492 reflected the actual tariff rates of freight.

Q. What happened—

Mr. MacIntyre: Just a second.

May I have the last answer read?

Trial Examiner Norwood: Read it.

(Answer read.)

By Mr. King:

Q. Mr. Hula, I show you a carbon copy of a letter dated October 26, 1938, from Clayton Mark & Company to Mr. Herbert S. Blake of the Rigid Steel Conduit Association and ask you if that is a carbon of a letter that you wrote (handing a document to the witness).

A. This is the original carbon of the letter I wrote on October 26 offering our resignation.

Mr. King: Will you mark it, please.

(The document referred to was marked for identification "Respondents' Exhibit No. 201.")

Mr. King: I now offer Respondents' Exhibit 201 in evidence.

Mr. MacIntyre: Objected to as being irrelevant and immaterial.

Trial Examiner Norwood: Received as marked, no objection being made to its being a carbon copy.

RESPONDENTS' EXHIBIT NO. 201 was offered
3493 and received in evidence.

By Mr. King:

Q. Mr. Hula, I believe when you testified as a witness for the Commission you stated that Clayton Mark & Company established the Chicago base. Do you recall that testimony?

A. Yes, I did.

Q. Was that done pursuant to an agreement with any other manufacturer?

A. No, sir; it was not. It was our own independent action.

Q. Do you know whether any other manufacturer was operating on a Chicago base when you established it?

A. To the best of my knowledge, we were the only ones

that issued the Chicago base from 1924 to approximately 1930.

Q. During that period your company was the only company, so far as you know?

A. The only one I have knowledge of.

Q. What happened in 1930, Mr. Hula?

A. In 1930 the new method of computing freight was adopted, and at that time we changed over from a list and discount basis to the per-thousand-foot freight adder system, and at that time we abandoned the Chicago base and went on the Evanston base.

Q. Why did you do that?

A. For the simple reason that some of our competitors realized that we had an advantage in establishing a
3494 Chicago base in the local Chicago market, and after they discovered it there was no advantage in our continuing the Chicago base, and we adopted the Evanston base to be competitive.

Trial Examiner Norwood: Well, did that change the situation with respect to Chicago?

The Witness: It did have a material effect on the price situation in the local Chicago market.

Trial Examiner Norwood: In other words, that had the effect of raising your price of goods delivered in Chicago, did it?

The Witness: That is right, to the extent of a dollar a ton.

Mr. King: Excuse me just a minute.

(Pause.)

By Mr. King:

Q. Did Clayton Mark & Company subsequently go back to the Chicago base?

A. Yes, but I do not recall the exact date. We did go back to the Chicago base. I would say somewhere around 1933 or 4.

Q. Why did you do that?

A. To again reestablish a price situation in the Chicago market that we felt was entirely proper.

Q. During the period you just mentioned, Mr. Hula, what was your principal competitor or competitors in that market?

A. Well, in the Chicago market we considered the
3495 Youngstown Sheet & Tube our keenest competition, and they had an Evanston base.

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Q. Did they have an Evanston base at the time you had a Chicago base? Do you know?

A. Yes, sir; they did.

Q. Mr. Hula, do you recall whether or not Clayton Mark & Company made any application to the National Recovery Administration for exemption from the provisions of the Electrical Manufacturing Code?

A. Yes, sir; I do have knowledge of such an application being made.

Q. Was that granted? Do you know?

A. It was denied.

Q. I show you a photostatic copy of an order signed by Mr. Harriman, Administrative Officer officer of the National Industrial Recovery Board, dated December 22, 1934, and ask you if that is a photostat of the order denying your application?

A. Yes, sir; it is.

Mr. King: Would you mark this, Mr. Reporter?

(The document referred to was marked for identification "Respondents' Exhibit No. 202.")

Mr. King: I offer that as Respondents' exhibit.

3498 Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBIT NO. 202 was offered and received in evidence.

By Mr. King:

Q. Now, Mr. Hula, is freight a substantial part of the cost of rigid conduit delivered at a point of use or resale which is at all remote from the place of production?

A. I could better answer that question by saying that, taking the over-all picture, that freight is a substantial part of the price in the sale of conduit.

Q. Now, in your business as a seller of rigid conduit, have you endeavored to keep yourself familiar with the state of the demand for and total sales of conduit throughout the country?

A. Very definitely.

Q. Based upon your experience and observation, what do you say as to whether the demand for and total sales of rigid conduit have fluctuated and do commonly fluctuate with fluctuations in the building industry?

A. There is a very definite relationship between 3499 building activity and the sale of conduit.

Q. Have you found that the demand for and sales of rigid conduit in any particular area in which you have

customarily sold it have fluctuated with fluctuations in building activity in that area?

A. Yes.

Q. What has been your observation and your experience in the business as to whether a lowering of the price of rigid conduit has been followed by any material increase in the total sales of conduit?

A. No noticeable increase in volume, and, on the other hand, I would say that it has a tendency to decrease the purchase, because the customer anticipates further decline, weakening of the market.

Mr. MacIntyre: I did not object to the question, but I do move that the last half of the answer that is in the form of speculation and conclusion be stricken from the record. It is not responsive to the question. It is incompetent.

Trial Examiner Norwood: Read the question and answer.

Mr. King: I think it is his opinion, sir.

Mr. MacIntyre: Certainly it is an opinion.

Mr. King: He is entitled to give his opinion as a seller and manufacturer.

Trial Examiner Norwood: Off the record.

3500 (Discussion off the record.)

(Question and answer read.)

Mr. King: I think it is responsive, sir.

Trial Examiner Norwood: I will allow the motion to strike the words "I will say" and everything thereafter in the answer.

Mr. MacIntyre: Well, what about "and it would have the tendency"? That is the portion I object to.

Trial Examiner Norwood: That is included—that language is included, but he made a factual statement just prior to that. Now, you can read that answer again, and I will show you.

(Answer re-read.)

Trial Examiner Norwood: Now, it starts with "I will say" there. Just leave that off.

You bring out any further facts there that he can testify to.

Mr. King: Will you read the answer now?

Trial Examiner Norwood: If he can say that it has decreased it in certain circumstances, he may do so, if he can testify as a fact.

(Answer read as follows: "A. No noticeable increase in volume.")

By Mr. King:

Q. Has it had any effect on a decrease in volume?

3501 Mr. MacIntyre: Now, that calls for a conclusion, not what the facts are, but what the effects of something have been.

Mr. King: If you think it is leading, all right, I will ask the question—

Mr. MacIntyre: Not only leading, but it calls for incompetent testimony, opinion.

Trial Examiner Norwood: I am going to let him answer that if he can do so in a factual way.

Did you have any experience along that line, and, if so, tell us what that experience is, not what the effect is.

The Witness: I can only state that in a general way. I have no definite illustration to give.

Mr. MacIntyre: Well, I object to giving opinions as to what might have happened.

Trial Examiner Norwood: Yes. Objection sustained.

By Mr. King:

Q. Do you find that buyers of rigid conduit, Mr. Hula, will commonly pay any higher price for the conduit produced by your company than for conduit of like type and size produced by other manufacturers?

A. We haven't found anyone who is willing to pay a premium for our conduit.

Q. Does your company prepay freight on its shipments of rigid steel conduit?

3502 A. In some cases.

Q. What are the considerations that enter into the selection and purchase of black enameled or of galvanized conduit by any prospective user, Mr. Hula?

A. That depends on the particular requirements and the engineer's opinion.

Q. As to which type is best suited?

A. And the serviceability.

Mr. King: That is all.

Trial Examiner Norwood: Examine him.

Cross-Examination by Mr. MacIntyre.

Q. On that last question, buyers prefer galvanized or zinc-coated conduit, if they don't have to pay any more for it than they do black enameled, in many instances; don't they?

A. If they could get it at the same price as black, they would prefer it; yes, sir.

Q. In what percentage of the cases do you prepay freight on your shipments of conduit?

A. I would have to make an estimate on that, Mr. MacIntyre. I might say that our general policy is to allow the freight to go collect, in view of the fact that we sell on open sale arrangements and make the freight allowance on the customer's invoice. There are a few customers who insist upon the prepayment of freight. In those cases we prepay it.

3503 Q. But in all other instances your general practice is to let them pay the freight when it is delivered to them?

A. That is correct.

Trial Examiner Norwood: Well, is that true as to the consignment shippers?

The Witness: No, not as to consignments.

By Mr. MacIntyre:

Q. But on these instances where the customer buys the goods and pays you your published prices, you ship it to him and he pays the freight?

A. And we allow it on the invoice.

Q. That is, as a deduction from it?

A. That is correct.

Q. And at what time do you make the allowance or deduction?

A. At the time he pays his bill.

Q. In other words, he submits his bill and you give him a credit from the bill for that amount?

A. That is correct.

Q. Do you know whether or not that you are at a competitive disadvantage in that respect from practices carried on by your competitors?

A. I wouldn't consider that a competitive disadvantage: no, sir.

Q. Well, in fact, you know that your competitors do likewise; that is the reason you do it; isn't it?

3504 A. Not necessarily.

Q. Well, you know on the same class of business your customers do likewise, from your experience and knowledge?

A. Well, they may do likewise, for the same reason that

we do. That is, we don't care to lay out considerable money and tie it up in transportation.

Q. Well, from your experience and knowledge in the handling of your business, you ascertain that they do that, but you do not know why; is that correct?

A. I know why we do.

Q. I am asking you about your competitors.

A. I do not know about my competitors.

Q. You know that they do it but you do not know why; is that correct?

A. That is correct.

Q. Have you found that customers of yours will pay smaller amounts for your merchandise than they will for your competitors'?

A. You mean a lesser price?

Q. Smaller price.

A. It is quite natural that they would.

Q. You have also found that they would pay, if they can get it a smaller price for your competitors than they would pay you; is that correct?

A. Yes, sir.

3505 Q. Why did you discontinue the use of the Evanston base in 1934, about which you told Mr. King on direct?

A. As I explained, the list discount basis was abandoned by some of the competitors. They adopted a more simplified method, which we thought was an advantage not only to ourselves in computing prices but to the trade in general.

Mr. MacIntyre: Read the question, please.

Trial Examiner Norwood: Read it.

(Question read.)

The Witness: I beg your pardon. That was not the correct answer.

For the reason that we again desired to establish our own identity at a Chicago base.

By Mr. MacIntyre:

Q. In other words, when you abandoned the Evanston base in 1934 and went on to the basis of a Chicago base and Pittsburgh base, and nothing else, you felt that that was taking action which would cause your identity to stand out; is that correct?

A. Well, not only to stand out, but to correct a market

situation which was more or less chaotic in the Chicago area.

Q. What do you mean by correct the chaotic market in the Chicago area?

A. Well, our jobbers did not know what the price was when we calculated on the Evanston base. There were arguments about the 5 cents per hundred pounds switching
3506 rate which was added to the Evanston base. So we abandoned it.

Q. It made for clarity and understanding on the part of all, then, as to what the price was to be in Chicago.

A. That is right.

Q. Is that correct?

A. That is right.

Q. When did your company start the use of the consigned stock plan?

A. I can't give you the exact date, but we encountered it as soon as we entered the business in 1924. We may have made a few contracts during the year 1925.

Q. In other words, you started it when you first went into the business?

A. We did execute some consigned contracts, but that was not our mode of selling.

Q. When did you start it as a general practice?

A. We didn't.

Mr. King: He did not say he started it as a general practice; he said just the opposite.

Mr. MacIntyre: I would like for the witness to tell us.

Trial Examiner Norwood: Yes.

Mr. King: I am objecting to the assumption in the question which is not in accord with the record.

By Mr. MacIntyre:

3507 Q. Is it your testimony that you are not using as a general business practice the consignment stock method today?

A. Yes, sir; it is.

Q. Do you use it with some jobbers?

A. We do with a few.

Q. How many out of the total number do you use it with?

A. I would say less than 10 percent of our total sales.

Q. And why do you use it with those 10 percent?

A. We would not enjoy the business if we didn't.

Q. What do you mean by that statement?

A. Well, there are a number of elements that go into it.

In the first place, a jobber may not have the necessary finances to carry an adequate stock, for one thing, and he may be partial to the consigned method as against open purchase because he does not want to speculate on the rise and fall of the market. Those are the controlling elements.

Trial Examiner Norwood: You mean that those are cases where you have to do it to get the business? Is that it?

The Witness: That is correct; yes, sir.

By Mr. MacIntyre:

Q. The discount allowed him under the consigned stock method as compensation was much smaller than was allowed before the consigned stock method came into the business, wasn't it?

A. I wish you would clarify what you mean by "discount." Do you mean the cash discount or the jobber preferential?

3508 Q. I am talking about the preferential.

A. There is such a wide fluctuation over a period of time, I do not believe that it is any smaller today than it was several years ago.

Q. You allow him about six percent now; is that correct?

A. That is correct.

Q. But is it your testimony that the jobber's preferential compensation never exceeded substantially six percent?

A. No, I would not make that answer.

Q. What do you know about it?

A. Well, as I say, it fluctuated. I do not recall offhand what the discount was 10 or 15 years ago.

Q. Is it your testimony that you do not know that it fluctuated downward substantially till it has reached the level of 5 and 6 percent?

A. That is right, generally.

Q. What was Mr. Wyman's job with your company?

A. How far back do you want to go?

Q. Well, let us say in 1924.

A. Well, he was general manager of sales in 1924.

Q. Until what time?

A. About 1930 he was made vice-president.

Q. In charge of sales?

A. Without any qualification, vice-president.

Q. What did he have to do with sales?

3509 A. He had general supervision of sales.

Q. Until what date?

A. Well, from 1924 until 1938.

Q. That is, until he left your company on October 15, 1938?

A. That is right.

Q. What were his initials?

A. E. L.

Q. And do you know where he went when he left your company on October 15, 1938?

A. He went with the Youngstown Sheet & Tube Company on October 15, 1938.

Q. As an official in their sales department; is that correct?

A. Yes, but I do not recall his title.

Q. He was sometimes referred to as "Bill" Wyman, wasn't he?

A. That is right.

Q. Now, for what period of time after October 26, 1938, the date shown on Respondents' Exhibit 201, did you continue to pay dues or fees to the Rigid Steel Conduit Association?

A. Officially, we obligated ourselves for the payment of dues up to the end of the year 1938. Subsequently the Association asked us if we would contribute to defray some of the expenses to wind up the affairs of the Association, and I think we made some contribution. I do not recall what it was.

Q. During the year 1939?

3510 A. That is right.

Q. The latter part of 1940?

A. That is right.

Q. Now, you told Mr. King that the Donley freight rate compilations did not make disposition of fractions, a fraction of a cent in terms of cents per hundred pounds. Is it also your testimony that when those rates are taken by your company and your competitors and converted in terms of cents per hundred feet, that you and your competitors do not dispose of fractions?

A. Are you referring to the freight adder figures?

Q. That is correct.

A. I would not care to extend my statement to the freight adder figures.

Q. What are the facts in that respect?

A. The facts are that the freight adder amounts per thousand feet are inflated 5 percent.

Q. Over and above the actual freight rate?

A. Over and above the freight rate.

Q. What about those that are expressed in terms of hundred feet?

A. The same thing is true, and the purpose of that is to allow a 5 percent cash discount on the inflated freight.

Q. And is it your testimony that in addition to the inflation of 5 percent that there is no disposition of fractions?

3511 A. No; there is a disposition of fractions in connection with the freight adder figures.

Q. Yes. And that disposition of fractions is accomplished by carrying to the next higher cent any fraction between one-half and one cent; is that correct?

A. Generally, yes; that is right.

Q. And you do that in arriving at your computations for delivered price quotations; is that correct?

A. That is correct.

Trial Examiner Norwood: The jobber discount, the jobber preferential is figured on the delivered price, is it, which includes the freight; is that it?

The Witness: That is correct, Your Honor. In other words, in order to take a five percent cash discount on the total bill, it is a matter of simplified auditing to inflate the freight rate 5 percent so you do not have to segregate the two.

Mr. MacIntyre: That is all.

Redirect Examination by Mr. King.

Q. Mr. Hula, do you know whether Mr. Wyman is with the Youngstown Sheet & Tube Company now or not?

A. He is not. He has not been since June, 1940.

Q. Mr. Hula, in response to a question of Mr. MacIntyre, you said that in 1939 your company made a contribu-

3512 tion to the Association for the purpose of helping to close it out. Was that a voluntary contribution?

A. It was voluntary and primarily for defraying of technical expense—technical activity expense.

By Mr. Gilpatric:

Q. Mr. Hula, referring to the questions which Mr. MacIntyre asked you about the Chicago base, have you any knowledge how the Youngstown Sheet & Tube Company

made delivery of its conduit shipments to customers in the Chicago area, or, rather, in the City of Chicago, after 1924, when you were quoting prices on a Chicago base and Youngstown was quoting on an Evanston base?

A. They made delivery by truck and by rail shipment to their customers in the Chicago district during the period 1924 and thereafter until about 1929, when they discovered that we were quoting our prices on a Chicago base as against their prices being predicated on an Evanston base. They presumably discovered that we had an advantage and inaugurated a so-called trap car service from their plant to the Grand Avenue team track on the North Western Railroad. That put them on a competitive equality with us so far as deliveries at Chicago were concerned—I mean the physical deliveries.

Q. Did that circumstance have any bearing on Clayton Mark going back to an Evanston base in 1931?

A. Yes, I will say frankly it did.

3513 Q. Mr. Hula, you testified in response to a question of Mr. MacIntyre that you knew that some of the other conduit manufacturers shipped conduit freight collect. Did you refer to direct sales or sales out of consigned stocks when you made that answer?

A. Well, I have no definite way of knowing. I presume there are many direct shipments that are prepaid as well as collect. Generally speaking, all consignments are prepaid.

Q. But you did not intend your testimony in that regard to refer to sales out of consigned stocks.

A. No, I did not.

Mr. Gilpatric: That is all.

Trial Examiner Norwood: Witness excused.

The Witness: Thank you.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. Gentholts: Mr. Benfield.

H. H. BENFIELD was thereupon called as a witness for the Respondents, and, having been previously duly sworn, testified further as follows:

Trial Examiner Norwood: You have been sworn in this case?

The Witness: Yes, I have, in Pittsburgh.

Trial Examiner Norwood: Give me your full name, please.

3514

The Witness: H. H. Benfield.

Trial Examiner Norwood: Thank you, sir.

Mr. Benfield has been sworn. Proceed.

Direct Examination by Mr. Gentholts.

Q. Mr. Benfield, I believe you previously testified in this case that you occupy the position of manager of conduit sales for the Steel & Tube Division of Republic Steel Corporation.

A. That is correct.

Q. And in that position you are responsible for the conduit sales made under the selling arrangement between Fretz-Moon Tube Company and the Steel & Tubes Division of Republic Steel Corporation?

A. That is correct, sir.

Q. When was Steel & Tubes, Inc., dissolved?

A. October 13, 1939, it became a division of Republic Steel.

Q. Do you know when the complaint was filed in this case?

A. January, 1941, I believe.

Q. And at the time of the dissolution of Steel & Tubes, Inc., what happened to the exclusive sales agency contract that was in effect with Fretz-Moon Tube Company?

A. Why, it was assigned to Steel & Tubes Division of Republic Steel from Steel & Tubes, Inc. Outside of that, nothing happened to it. It continued to be in existence.

3515 Q. And you are operating under the terms and provisions of that contract today?

A. Yes, sir; we are today.

Q. Mr. Benfield, does Republic Steel Corporation manufacture rigid conduit?

A. No, sir; they do not.

Q. What connection, if any, does Republic Steel Corporation have with the rigid conduit industry?

A. They have none whatsoever, outside of their indirect connection through the Steel & Tubes Division, who have this contractual arrangement with Fretz-Moon.

Q. Was Republic Steel Corporation ever a member of the Rigid Steel Conduit Association?

A. No, sir.

Q. Has Steel & Tubes, Inc., or the Steel & Tubes Division of Republic Steel Corporation ever been a member of the Association?

A. No, they have not.

Q. Has Republic Steel Corporation ever purchased any of the Donley Freight Service bulletins.

A. No, sir.

Q. What is your testimony in that respect in connection with the Steel &—as to Steel & Tubes, Inc., or Steel & Tubes Division of Republic Steel Corporation?

A. Well, the Steel & Tubes Division never bought
3516 any service from Donley either. However, Fretz-Moon purchased this Donley freight service which they furnished us. That was a part of the understanding, as covered by the contract, that they were to furnish us with all information pertaining to price, freight, and so forth.

Trial Examiner Norwood: Have a five minutes' recess.

(There was a short recess taken.)

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 203-A to 203-R, 204-A to 204-D, 205-A to 205-C, 206-A and 206-B, 207-A and 207-B, and 208-A to 208-C.")

Trial Examiner Norwood: Proceed.

By Mr. Gentholts:

Q. Mr. Benfield, I show you Respondents' Exhibit 200-A through D, inclusive, and ask you to state what form of contract that is.

A. Why, this is a specific building purchase contract for Fretz-Moon conduit. In fact, it is a negotiated contract, the one that you were talking about yesterday.

Q. How long had that form of agreement been in effect?

A. I believe Mr. Barton testified on that yesterday.

Q. No.

A. I don't know.

Q. If you know.

A. I do not know.

3517 Q. Well, now, Mr. Benfield, referring to the substance of this particular exhibit, I show you a series of correspondence marked Respondents' Exhibit 203-A through 203-R, inclusive, and ask you if this is the correspondence that deals with the negotiations and sale of conduit under this contract?

Trial Examiner Norwood: Read that question.

(Question read.)

A. Yes, this entire file deals with the negotiations and correspondence leading up to the order which was received from Graybar Electric Company, Birmingham, and our invoice covering the shipment.

Mr. MacIntyre: Will you pardon me for a minute?

(Thereupon, Mr. MacIntyre left the room and returned.)

Trial Examiner Norwood: Proceed.

3525 By Mr. Gentholts:

Q. Mr. Benfield, referring again to Respondents' Exhibit 200-A through D, inclusive, I will ask you to
3526 look at this exhibit and state whether you can testify as to the substance of this contract.

Mr. MacIntyre: What is the question?

(Question read.)

Trial Examiner Norwood: Of your own knowledge.

The Witness: Well, I do not understand the question. I do not know what you mean by "substance."

By Mr. Gentholts:

Q. Can you testify, Mr. Benfield, regarding the letting of the contract with the Graybar Electric Company and as to the terms and the price of sale of the conduit that was shipped under that contract?

A. I cannot of my own knowledge.

Mr. MacIntyre: I object to the question.

Trial Examiner Norwood: He can tell us whether he can testify or not from his own knowledge, or just how.

Mr. Gentholts: He has answered that he cannot of his own knowledge.

The Witness: I cannot; no, sir.

By Mr. Gentholts:

Q. Well, now, Mr. Benfield, I show you Respondents' Exhibit 198-A through 198-C, and ask you to identify this agreement.

A. This is a consigned stock contract between Steel & Tubes, Inc., and any jobber who may be filled in. This is a blank contract, in other words, covering the sale of Fretz-Moon conduit. This is the contract that we used prior
3527 to the latest revision in our contract form. This was used from 1933 through '36 and maybe part of '37.

Q. Is it in use today?

A. We have a good many of them still in existence. I can recall offhand five or six of them where we negotiated the contract probably back in '33 or '34 and they are still in existence and we are still operating under them.

Q. Why wasn't the new form of contract adopted?

A. Well, some of our customers did not like the new form. Some of them preferred to operate under the old form, and we were in no position to object, so we simply continued under the old form.

Q. Now, Mr. Benfield, will you please state the method of sale and distribution that has been used by your company in connection with the sale of rigid conduit under the Fretz-Moon selling agreement?

A. Well, the method of sale and distribution as employed by Steel & Tubes is primarily the consignment method of sale. The material manufactured by Fretz-Moon is in reality consigned to Steel & Tubes, and they in turn consign it to distributors throughout the country, or we sell it direct as the occasion may require.

Q. Who dictates the price at which the conduit will be sold?

A. The Fretz-Moon Tube Company establishes the price at all times.

3528 Q. Well, how did that operate, Mr. Benfield, with respect to the establishment of prices under this agreement?

A. Well, from a practical standpoint, the Fretz-Moon Tube Company will advise us of their published price position, and then they will follow that up by sending us printed price cards with Steel & Tubes' name on them, which we distribute to the trade and our salesmen.

By Mr. Gentholts:

Q. Mr. Benfield, calling your attention to Respondents' Exhibits 203-C through R, inclusive, I will ask you to look at those papers and state whether they have been taken from the files of your company.

A. Yes, they have.

Q. And those papers were secured by the company in the ordinary course of business?

A. Yes, sir.

Mr. Gentholts: We offer them in evidence.

Trial Examiner Norwood: Any objection?

Mr. MacIntyre: May I see the papers?

(Mr. Gentholts hands the documents to Mr. MacIntyre.)

Trial Examiner Norwood: Off the record.

3529 (Discussion off the record.)

Trial Examiner Norwood: For the record.

I will reserve the ruling on the proffer and let the examination proceed.

Mr. Stewart: May I suggest, Mr. Examiner, that the exhibits are also admissible in corroboration of Mr. Barton's testimony as to market conditions at the time the contract was made.

Mr. MacIntyre: If they are offered for the purpose of corroborating Mr. Barton, then they should have been brought forward while Mr. Barton was on the stand.

Trial Examiner Norwood: Proceed.

By Mr. Gentholts:

Q. Mr. Benfield, the price cards that are in evidence here as part of the Commission's case, will you state how those cards are published and how they are handled by your company as selling agent?

A. You mean the cards that we sent to the Commission ourselves?

Q. The price cards that are in evidence in this case. I think the numbers are—Fretz-Moon Tube Company price cards, starting in with the No. 69 through 84-A.

A. I get what you are talking about. What do you want me to say again? I mean, what was the question?

Q. Will you explain how you operate with respect
3530 to the use of price cards 69 through 84-A in the sale of the conduit product under the Fretz-Moon Steel & Tubes contract?

A. Well, all the cards are handled the same way. Fretz-Moon advises us from time to time what the prices are, and they publish a card at those prices, which they furnish us to distribute to our jobbers and to our salesmen, and that is the price we sell at until they advise us to the contrary.

Q. Are any other price cards published either by Steel & Tubes, Inc., before it dissolved or the Steel & Tubes Division of the Republic Steel Corporation?

A. Steel & Tubes has nothing to do with prices, and we don't publish them or prepare them or conceive them.

Q. Now, Mr. Benfield, in your experience under this selling arrangement, is conduit always sold on the card prices?

A. Oh, no. That is part of our job with Steel & Tubes, to keep Fretz-Moon advised as to what the market conditions are here and there around the country, and we try to point out that if we want to be competitive and get this piece of business or that it takes something better than the published price, and Fretz-Moon will from time to time authorize us to go after that piece of business at some discount from the current published position.

Trial Examiner Norwood: Well, that is always a confidential arrangement is it?

The Witness: Well, we think so, but everybody 3531 knows all about it.

By Mr. Gentholts:

Q. Now, Mr. Benfield, I show you Respondents' Exhibit 204-A through D, and ask you what that is.

A. Well, this is a tabulation of information received from our own records and prepared under my own supervision of all direct sales of Fretz-Moon conduit in the year 1936.

Q. Well, now, calling your attention to the first column on the lefthand side that is headed "F. D. No.," what is that?

A. Well, that is the invoice number of that particular sale.

Q. And then the column that shows "on card," what does that mean?

A. That is the value of the invoice that was sold at the published price at the time the order was taken.

Q. And what does the column that is headed "Off Card"—what does that show?

A. That shows those invoices and the value of them that were invoiced at a price other than the card, and they also show that the order was entered into and taken at a price other than at the published price at the time the order was negotiated.

Q. And these columns run through the exhibit to the end in the same manner as you testified, do they, Mr. Benfield?

A. Yes, they do.

3532 Q. And the column marked "Freight," what does that indicate?

A. Well, that shows certain shipments that were made from time to time where the rates to that particular destination were not available from the freight data that Fretz-Moon supplied us, and in such cases we found it necessary to either check with our own traffic department or the railroad to establish the proper freight to apply on that particular shipment. The dollar value of that column is included in this second column, which is your quotation on card price column.

Q. So none of the items that appear under the column "Freight" have any connection with the column that is marked "Off Card"?

A. No, they do not. They are there simply to bring out the fact that rates from the freight book supplied us are not always sufficient.

Q. Now, calling your attention to the recapitulation at the end of this exhibit, on the exhibit marked 204-D, the figure Total Off Card of $116,716.13, what does that represent?

A. That is the total of the third column here all the way through this tabulation of the business which we accepted at a price other than our published position at the time we took the order.

Q. And the item "Total on Card" of $235,237.36, what does that represent?

Mr. MacIntyre: I object to putting in the substance of the tabulation until we see whether or not it is admissible.

3533 Trial Examiner Norwood: Yes. You can show what it is and what the columns represent, and so forth, but—

Mr. MacIntyre: For that reason, I ask that the last question and answer concerning what the third column shows be stricken, or at least the motion for striking it be kept under advisement until we can find out whether or not the document itself is admissible.

Mr. Gentholts: All right.

Trial Examiner Norwood: Well, I will do that.

By Mr. Gentholts:

Q. Mr. Benfield, will you explain the recapitulation that appears at the end of this Exhibit 204-D.

A. Well, that is simply an adding up of these columns

and totaling them for convenience, that is all, and we go to the further extent of showing what percentage was off card to the total of our shipments as covered by this tabulation.

Q. Well, what percentage was off card, according to this tabulation?

Mr. MacIntyre: I object.

Trial Examiner Norwood: Objection sustained.

By Mr. Gentholts:

Q. Now, Mr. Benfield, calling your attention to Respondents' Exhibit 205-A through C, I will ask you to describe what that is.

A. Well, this is identical to that previous exhibit, 3534 only it covers the year 1937.

Q. And the same procedure was followed, as you have testified, with respect to the figures that you compiled for 1936?

A. That is correct.

Trial Examiner Norwood: Now, did he explain fully how he handled the contract shipment?

Mr. Gentholts: I beg your pardon?

Trial Examiner Norwood: Did he explain fully how he entered the contract shipments? The shipments on contracts?

Mr. Gentholts: No. I thought I would get all these identified first.

Trial Examiner Norwood: Go ahead.

By Mr. Gentholts:

Q. Now, calling your attention also to Respondents' Exhibit 206-A through B, I will ask you to describe what that is.

A. This is identical to the previous exhibits, only it is for the year 1938.

Q. And the same procedure was followed in compiling this report?

A. Yes, sir.

Q. Calling your attention to Respondents' Exhibit 207-A and B, I will ask you what that is.

A. This is identical to the previous exhibit, except that it is for the year 1939 and has been compiled in the same way.

Q. And how about Respondents' Exhibit 208-A through C?

3535 A. That is the same, except for 1940 and compiled in the same way.

Q. Well, now, Mr. Benfield, returning to Respondents' Exhibit 204-A, I direct your attention to the first item that appears under the column marked "Off Card," and an item amounting to $2,503.32. Are you in a position to state how you determine that that is an off-card sale?

A. Yes.

Q. How do you determine it?

A. Well, I would really have to refer to invoice No. 680 and go back to the order, and I have that information here, if you would like to have it.

Mr. Gentholts: Off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. Gentholts: We offer these exhibits in evidence.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Proceed.

Mr. Gentholts: Let the record show, Mr. Examiner, please, that all the supporting data in connection with these exhibits is available for the Commission.

Trial Examiner Norwood: Will the counsel require the lunch hour before he is prepared to state his objections?

Mr. MacIntyre: Oh, certainly, it will be necessary,
3536 if I am to be charged now with the responsibility of checking the basic data and accepting this as being based on the basic data, that I have also the opportunity of taking in hand that data at this time and making what use of it that I can.

Trial Examiner Norwood: Well, I think that the counsel may state generally his attitude to it, and if it is received it may be received subject to check, subject to a later check.

Mr. MacIntyre: Of course, I don't see any way for me to make any general statements, even as to the offer, without having something like a half an hour or so to examine them, because I don't know what they mean.

Trial Examiner Norwood: The counsel may retain them until we reconvene after lunch. He may examine them and any date that counsel may furnish.

Mr. MacIntyre: May we go off the record a second?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Proceed.

By Mr. Gentholts:

Q. Mr. Benfield, again, with respect to the subject of price cards, I will ask you whether any of the cards published by—or used by you and published by the Fretz-Moon Tube Company that recorded price changes were initiated by you?

A. No, sir.

3537 Q. When you adopted the use of these changed price cards, why did you do that?

A. You mean when we adopted a new card?

Q. Yes.

A. We did it on instructions. We were told to do it. Fretz-Moon advised us of a new price, either up or down, and that is what we did.

Q. The last card under which you were operating is 84 and 84-A?

A. Correct, sir.

Q. And you are selling conduit today under that card?

A. Yes, sir.

Q. State whether or not these conduit cards have been filed with the Office of Price Administration?

A. Yes, they have.

(The documents were thereupon marked for identification "Respondents' Exhibit No. 209-A to 209-M.")

By Mr. Gentholts:

Q. Mr. Benfield, I show you Respondents' Exhibit 209-A through M, inclusive, and ask you to identify these papers.

A. These papers are copies of Fretz-Moon price card No. 84, or 84-A; also a letter from my superior, Mr. Foy, general manager of sales of Republic, to Mr. Henderson of the Office of Price Administration and Civilian Supply, in which he adopts these prices at the request of the O. P. A. C.

3538 Q. And, calling your attention specifically to Exhibits 209-H, I, J, K, and 209-L and M, I will ask you whether those are the prices—the price filings dealing directly with the sale of rigid conduit filed with the Office of Price Administration?

A. Yes, these are the ones filed with the Office of Price Administration.

Q. Did you cooperate with Mr. Foy in connection with the preparation of this information and filing it with the Office of Price Administration?

A. Yes, I did. I was asked to furnish the current price cards so that Mr. Foy could comply with the request of O. P. A. C.

Q. Why was this action taken?

A. You mean why did O. P. A. C. ask for it?

Q. Why did you file these prices?

A. Well, there was no alternative. We—we consider a request from any Government office these days as a—practically a demand. Therefore, we gave them exactly what they wanted, and we abided by their regulations—or requests, rather, ever since.

Mr. Gentholts: We offer these exhibits in evidence.

Mr. MacIntyre: May I also retain these until after lunch and state my objection at that time?

Trial Examiner Norwood: Yes. We will reserve it
3539 until after lunch hour.

By Mr. Gentholts:

Q. Mr. Benfield, have you changed your prices, other than as shown on the price filings with the Office of Price Administration, since these were filed?

A. We have sold it at other prices, but we haven't put out a new published position.

Q. That is what I mean. Have you published any higher prices since these price filings were filed with the Office of Price Administration?

A. No, we have not; nor have we sold at any higher prices.

Q. What has your experience been as to whether or not you have sold below the filed prices since these prices were filed?

A. What has my experience been? Is that the question?

Q. Yes.

A. Oh, we have negotiated several orders, contracts at prices less than the one we filed with O. P. A. C.

Mr. MacIntyre: Now, I move that the question and the answer be stricken. It doesn't meet any issue here; it is a mere attempt to show that in some instances the Respondents do not use their price-fixing vehicle, but those instances where they have used it and in which they have used it, and of which I have put in evidence of their not meeting. Consequently, it is irrelevant and immaterial
that in some instances they might have engaged in
3540 some price competition through a failure to make
perfect their price-fixing scheme.

Trial Examiner Norwood: Read the question and answer.

(Question and answer read.)

Mr. MacIntyre: I might add to the objection that there is no specification as to parties, times, and dates on the instances alleged.

Trial Examiner Norwood: Motion denied.

Go ahead.

By Mr. Gentholts:

Q. Mr. Benfield, on the question of published price cards used and issued by your company, have you ever had any understanding or agreement with your competitors or with these Respondents in connection with the issuance of such cards?

A. No, we have not.

Q. In the use of the Donley freight service, I will ask you whether you ever had any understanding or agreement with your competitors or with these Respondents in connection with the use of such service?

A. No, sir.

Trial Examiner Norwood: Well, now, you are speaking within your own knowledge? Just what do you know about the arrangements between your company and these others?

The Witness: Why, I know we have none, sir.

Trial Examiner Norwood: How do you know that?

3541 The Witness: Well, I am the manager of sales. I believe I would—if somebody else made them, they would have to tell me. I have got to run the show.

Trial Examiner Norwood: Go ahead.

By Mr. Gentholts:

Q. Mr. Benfield, in your business as a seller of rigid conduit, have you endeavored to keep yourself familiar with the state of the demand for and the total sales of conduit throughout this country?

A. Yes, indeed. That is a big part of our job, to find out what is going on in the building industry and where it is.

Q. Will you describe, Mr. Benfield, how your company operates in connection with the maintenance of branch offices in various parts of the country for the sale of rigid conduit?

Mr. MacIntyre: That is irrelevant and immaterial. It is objected to.

Trial Examiner Norwood: Read it.

Mr. MacIntyre: As to how many branch offices he has. (Question read.)

Trial Examiner Norwood: Overruled.

A. Oh, we work like most any other manufacturer with their own salesmen. We have district managers with salesmen operating under them in all principal cities and all principal markets, even though there is no large town there.

By Mr. Gentholts:

3542 Q. Do these salesmen sell other products other than rigid conduit?

A. Yes, indeed. They sell all the products made or handled by Steel & Tubes Division of Republic Steel.

Q. Based on your experience and observation, what do you say as to whether the demand for and the total sales of rigid conduit have fluctuated and do commonly fluctuate with fluctuations in the building industry?

A. Why, your demand in the sale of conduit is almost wholly dependent on your building activity. It is obvious that you can't use it unless there is some construction going on, with the exception of some minor alterations or repair work.

Q. Have you found that the demand for and sales of rigid conduit in any particular area in which you have customarily sold it have fluctuated with fluctuations in the building activity in that area?

A. Are you talking about prices now?

Q. The demand for sales.

A. Well, sure. The—you might have, in fact, you did have a few years ago a terrific building boom in Houston, Texas, when Detroit, Cleveland, and other places were just flat on their back for building business. That is very common. You don't always have a condition like we do today where everything is booming, no matter where you go, from the standpoint of building.

3543 Q. What has been your observation and experience as to whether the lowering of a price of rigid conduit has been followed by any material increase in the total sales of conduit?

A. Well, if I understand your question, a reduction in the price of conduit will not increase the volume of sale.

Mr. MacIntyre: I object to the—that is, I move that the answer be stricken. It is not responsive. If the question had called for such answer it would have been objec-

tionable because the answer states what will occur without stating what the witness has noted as to what has occurred.

Trial Examiner Norwood: The question very clearly calls for just what he told us there. The motion is denied.

Mr. MacIntyre: The question asked the witness to state whether certain things have occurred, not what will occur.

Trial Examiner Norwood: You can cross-examine him on that. You can cross-examine him on that.

By Mr. Gentholts:

Q. Mr. Benfield, do you find that buyers of rigid conduit will commonly pay any higher prices for conduit produced by your company than for conduit of like type and size produced by other manufacturers?

A. No, sir. Price is the most important factor in making a sale of conduit.

3544 Q. How does your company operate with respect to the prepayment of freight on its shipment of rigid steel conduit?

A. Steel & Tubes Division doesn't pay any freight. That is a Fretz-Moon function, and I couldn't answer the question.

Q. Mr. Benfield, will you explain what, if any, influence reciprocity has on the sale of rigid conduit, in so far as your company is concerned?

Mr. MacIntyre: Now, may we have some explanation of the term as it is used here before we get an answer as to what effect that something has on it? I don't know what is meant. There is no showing yet whether or not it is clear—that is, to the witness,—and whether or not, if it is, it is relevant and material.

Trial Examiner Norwood: Objection overruled.

A. Well, our experience has been that reciprocity is an important factor in the sale of conduit after all other more important factors have been settled, such as the price of the material. Quite often companies buy and sell back and forth between themselves, and we, as an example, might be in the market for material manufactured by a chemical company. They might be building a new building. We would buy some chemicals from them and they would buy some conduit from us.

Trial Examiner Norwood: That is what you understand by the term "reciprocity in sales"?

The Witness: That is virtually it; yes, sir. How-
3545 ever, in our purchase from them, or our sale to them if the prices aren't equal, the reciprocal connection means nothing whatsoever. I have never known a time when we could get a premium for our conduit under a reciprocal connection.

By Mr. Gentholts:

Q. Mr. Benfield, in the event of a price drop, do you hold a purchaser under a specific job contract to the price stated in the contract?

A. No, sir. He gets all the breaks. If the price goes up he stays where he is; if it goes down, he gets the benefit of the drop.

Trial Examiner Norwood: Off the record a minute.

(Discussion off the record.)

Trial Examiner Norwood: We will recess till 1:45.

(Whereupon, at 12:15 o'clock p. m., a recess was taken until 1:45 o'clock p. m. of the same day.)

3546 Afternoon Session.

1:45 P. M.

H. H. BENFIELD, resumed the stand and testified further as follows:

Trial Examiner Norwood: Proceed.

Are you ready to state your objections to the proffered exhibits?

Mr. MacIntyre: I think so.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: First, I would like to ask a question or two of the witness.

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: Bearing on this 209.

Examination on Voir Dire by Mr. MacIntyre.

Q. You have stated, Mr. Benfield, that Respondents' Exhibit, for identification, 209-A and what is attached to it were transmitted pursuant to some request. Do you have that request?

A. I did have it. It was in mimeographed form sent to everybody in the steel business. It was no more than just like an O. P. M. order. They don't address it to you personally; they broadcast it.

Q. Do you have a copy of it?

A. I think we could get it over at O. P. A. C. I remember reading the request. It specifically referred to
3547 all items in the steel industry as shown on certain pages of the American Iron & Steel Institute of a certain year, I think 1939. I can't remember the pages or the year, but that is where they listed the items that they wanted prices filed on.

Q. When you secure a copy of it will you submit it to Mr. Gentholts so that he can submit it to me?

A. I think I can do it.

Mr. MacIntyre: Will you do it, Mr. Gentholts?

Mr. Gentholts: Yes, sir.

Mr. MacIntyre: Well, with that understanding, my only objection to this 209A to L is—

Trial Examiner Norwood: A to M, isn't it?

Mr. MacIntyre: A to M.

—that they do not relate to any relevant and material matter. It again goes to a matter of something the Republic Steel Corporation did in May, 1941, in connection with the filing of a price with a Government agency here in Washington under the defense program.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: And not as a bid on any offer to sell goods.

Trial Examiner Norwood: Well, now, does this include the price of rigid steel conduit?

Mr. Gentholts: Yes, sir. The last two items that are marked cover that, Mr. Examiner.

3548 Trial Examiner Norwood: Well, I overrule the objection and receive 209-A to M, inclusive.

(The documents heretofore marked for identification "Respondents' Exhibit No. 209-A to 209-M," was received in evidence.)

Mr. MacIntyre: Now, as to this—

Mr. Gentholts: Just a moment.

Trial Examiner Norwood: Proceed.

By Mr. Gentholts:

Q. Mr. Benfield, I show you Respondents' Exhibit 187 and ask you if that is the pamphlet that you referred to

that Mr. MacIntyre asked you to later supply (handing pamphlet to the witness)?

A. Well, I must honestly say that I never saw this before, but I have seen something similar to it.

Q. You have not seen a similar pamphlet like this, Mr. Benfield?

A. No, sir. I notice this is revised June 20. Maybe they put it in pamphlet form after the one I saw. I saw mine in April or May, something like that.

Q. Well, will you look at this exhibit again and see whether the contents contained in this exhibit might have been received by you in a different form?

Mr. MacIntyre: I do not like to object to this, but I must, because it calls for speculation of the witness 3549 as to whether he might have received—

Trial Examiner Norwood: He could describe anything in any way similar to that that he received.

Mr. Gentholts: All I am trying to do, Mr. MacIntyre, is save the time and efforts of hunting up this other form that he apparently has in his files.

The Witness: Well, this, what places I have looked at so far, says exactly the same thing. They refer to the prices announced prior to December 31, 1940, customarily quoted by Carnegie Illinois Steel Corporation, American Steel, and so forth. That is exactly the wording of the mimeographed form that I saw.

I have not found in here where they refer to those pages of the Institute report. If that is in there—

(Mr. Gilpatric indicates to the witness in the exhibit.)

The Witness: On page 2 here it defines what they mean by iron and steel products, "including all iron and steel"—You want me to read it?

Trial Examiner Norwood: Just say whether or not it is familiar to you.

The Witness: It is; yes, sir.

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: I object to Respondents' Exhibit 3550 203-C to M as being irrelevant and immaterial.

I object to 203-N to R, inclusive, as being incompetent, irrelevant, and immaterial. If Your Honor will note, 203-N to R is a series of letters and telegrams which are passed between parties who are not here, who have not been offered as witnesses, and even if the parties who did write them were on the witness stand they could not

testify in accordance with the statements that are made in them, because they in themselves are hearsay of what someone else told those parties that still other people had done. It is hearsay so far removed from competent evidence that I can't understand why it would ever be offered.

Trial Examiner Norwood: What is the purpose of this proffer?

Mr. Gentholts: Mr. Examiner, with respects to the latter portion of that offer, there may be something to what Mr. MacIntyre says as to the immateriality of the first few pages of that proffer, but the last portion, we feel that it definitely supports the testimony of Mr. Barton that was made yesterday on the circumstances that surrounded the issuance of card 72, in so far as his company was concerned. This particular order is a Fretz-Moon order, and the last several letters definitely indicate the situation that existed—

Mr. MacIntyre: In other words—

Mr. Gentholts: —immediately preceding the is-
3551 suance of card 72.

Mr. MacIntyre: In other words, what Mr. Gentholts is urging is that we now have accepted into evidence here telegrams and letters of persons not present, talking about statements made to them by still other people as to what still other people had done, as something which he hopes will bolster statements made by Mr. Barton when Mr. Barton was on the witness stand yesterday. I think it is going awfully far to even suggest such.

Trial Examiner Norwood: This is to illustrate one of these deals here, as I understand it?

Mr. Gilpatric: Yes. Yesterday Mr.—

Trial Examiner Norwood: I should not receive that material to establish the truth of these hearsay statements, but so conditioned I would be inclined to admit it for study, if that is satisfactory.

Mr. MacIntyre: Well, Mr. Gentholts admits that except for those statements, everything else is probably irrelevant and immaterial, but he wants those statements in. He is not offering it as an illustration of the entire project. He is offering it as an illustration of what is going on out in the industry.

Mr. Gilpatric: No. No. That isn't the purpose of the offer, Mr. MacIntyre. It is to show the circumstances in

Mr. Barton's mind, whether or not those facts were
3552 so, whether or not the circumstances that were reported to him were the fact when he came to issue his card 72—or, rather, to authorize the quotation of five points below 70, which preceded card 72, these were the facts which influenced him. Now, these are important for us to show in order to meet the Commission's charges in this case. Yesterday afternoon Mr. Barton testified that Fretz-Moon openly quoted prices that they had been encountering during the time.

"We had been endeavoring to get some business at something near a profitable price and couldn't get it, and I authorized our salesmen to quote four and five off the card, which seemed to be about the bottom of the market." That is from page 3428 of the record.

Mr. MacIntyre: But, if Your Honor please, this Graybar Electric Company, who handled it with their contractor, a man by the name of Little, is an agent, so-called, or at least it is alleged by Respondent Republic Steel that Graybar was, in this instance, an agent of Republic in the handling of this. It is fully within their power if they want to call Mr. Owen of the Graybar Electric Company to testify concerning those things to call him. Why should they foist upon us, therefore, writings of his as to what has taken place outside when it is fully within their power to call him and let him be subjected to cross-examination?

The Witness: May I—

3553 Trial Examiner Norwood: I am going to overrule the objection and receive these for their illustrative value here and study, conditioned that they are not to be taken to establish the truth of these hearsay statements, and I see no reason for P, Q, and R, so I shall overrule the objections and receive Respondents' Exhibit, for identification, 203-C to O, inclusive.

RESPONDENTS' EXHIBITS NOS. 203-C to 203-O, inclusive, were offered and received in evidence.

Trial Examiner Norwood: The others are rejected.

The Witness: Mr. Examiner, may I explain something off the record?

Trial Examiner Norwood: What is this?

The Witness: I say, may I explain something off the record?

Trial Examiner Norwood: Yes.

(Discussion off the record.)

By Mr. Gentholts:

Q. Mr. Benfield, who is Mr. Owen?

A. Mr. Owen is our salaried salesman with headquarters in Atlanta covering the Southern States.

Q. Now, just one other question, Mr. Benfield, with reference to Respondents' Exhibits 204-A through 208-C, inclusive. I will ask you whether the off-the-card
3554 orders that are indicated on those exhibits represent all of the quotations that you made during this period on an off-the-card basis?

A. No, it does not. Of course, we didn't receive all the business that we went after. We would quote off the card and still not get the business. Maybe we didn't quote low enough or maybe we quoted the same as one of our competitors off the card and they got the business for other reasons.

Trial Examiner Norwood: That represents all the sales, though, does it?

The Witness: That represents the sales; yes, sir.

Trial Examiner Norwood: During the time stated?

The Witness: But not the—not the attempts.

By Mr. Gentholts:

Q. Mr. Benfield, how long do you protect a purchaser under a specific job contract?

A. Well, our contract form provides for six months and with the privilege of extension from that time if the job is still in progress, but we have changed that from time to time either by correction or verbal understanding. We have had it at 90 days sometimes, and sometimes we made it the life of the job, irrespective of how long it may take.

Q. State whether you have any understanding or agreement with any of your competitors or Respondents in this case with respect to the use of the specific job contract?

A. No, sir.

3555 Q. State whether you have any agreement or understanding with any of your competitors or Respondents in this case with respect to the use of the consignment form of agreement?

A. No, sir.

Q. What do you understand to be the meaning of the phrase "resale price," as used in the conduit industry?

A. Well, a resale price is really a misnomer, particularly when it is referred to in connection with consign-

ment sales, because actually there is only one sale of the material, and that is from the manufacturer to the ultimate consumer. The jobber in the middle actually sells it for the manufacturer. He doesn't buy it first and then sell it. But the phrase "resale" is just a habit in the industry to refer to the customer's costs, not the customer's costs less the jobber's commission.

Q. Mr. Benfield, what contact, if any, have you had with the Rigid Steel Conduit Association?

A. Well, Steel & Tubes is not a member, nor am I. I have never been on any of their committees or never had a voice in any of their meetings. I attended several as a guest of Mr. Barton.

Q. Have you ever held any office in the Association?

A. No, sir.

Q. Never been appointed on any committees?

A. No, sir.

3556 Q. And Association committees?

A. No, sir.

Q. So what, other than attendance of a few meetings as a guest of Mr. Barton, that has been your only participation in the affairs of the Association?

A. Correct.

Q. Mr. Benfield, handing you Commission's Exhibit No. 572, I ask you whether you recognize this letter.

A. Yes, sir. I wrote it to Mr. Barton.

Q. Well, now, calling your attention particularly to the second paragraph of this letter, which reads, and I quote: "This plan calls for a new policy on the part of the manufacturers concerning what action they will take in the event the prices below the published market are made." I ask you whether you have heard—where you first heard of any conversation with reference to the plan that you refer to in this letter?

A. The first, in fact, the last time I ever heard of this plan, was in Detroit. A customer of ours, in fact, asked me if I would listen to it and pass it on to Mr. Barton for what it may be worth, which I did. I explained the thing, in as much detail as I could remember, in this letter, and Mr. Barton acknowledged the letter saying he would talk to me some time about it, but actually we never discussed it again, and the thing just never came up in any further

3557 meetings with Mr. Barton or anybody else.

Q. Now, Mr. Benfield, calling your attention to

Commission's Exhibit No. 622, I ask you whether you recognize this letter (handing a document to the witness).

A. Yes. This is a written memorandum I made to Mr. Harston my immediate superior, at the time. I ordinarily discuss these matters with him in person and orally so as to avoid any misunderstandings. But he was away and I could not get to him, so I wrote him this letter.

Q. Now, Mr. Benfield, calling your attention to the third paragraph of this letter, or memorandum, in which you state that since neither Youngstown nor Clayton Mark manufacture conduit in Chicago, the dropping of the Chicago base was discussed, will you explain what you mean by that statement?

A. Well, yes, I would like to explain it, because there actually was no discussion. It was a matter brought to the table and immediately dismissed without any further—or any actual discussion. That is the real reason why I mentioned that we usually discuss these matters orally, so that there is no misunderstanding such as might creep into a paragraph like this in a letter.

Q. And calling your attention to the second last paragraph on the second page of the memorandum, in which you state "Commercial problems were not discussed at this meeting except between individuals, and no definite
3558 airing was given to the unsettled price situation on cards 80 and 81," what do you mean by that statement?

A. Well, just what it says. There was no commercial discussion at the meeting at all.

Q. Well, where was the discussion?

A. Well, after the meeting broke up I, myself, sat around with two or three of them—I don't remember who they were now, but we are bound to discuss such matters in private conversation. That is where we get our idea of what some of these other people are doing, just by keeping our ears open.

Q. Now, Mr. Benfield, again referring to this exhibit, I will ask you to state what you mean by the statement "Please note this memorandum and destroy it." Why did you state that?

A. Well, that is on there because we don't like letters like this, where we mention other companies, some of which might be customers or as well as competitors, get into our files and be available to our employees and every-

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body else either in our organization or in Fretz-Moon organization. They might be misunderstood and misconstrued. Therefore, we attempt in all cases to keep our discussions as oral as possible among the officers and managers of the company.

Mr. Gentholts: Just one moment, Mr. Examiner, please.

Trial Examiner Norwood: Yes.

(Pause.)

3559 By Mr. Gentholts:

Q. Mr. Benfield, I want to ask you whether your company has ever worked with other Respondents in the preparation of a specific list of recognized jobbers who you dealt with exclusively in the sale of conduit?

A. No, sir. I never saw such a list or even heard of it.

Q. What is the fact, Mr. Benfield, as to whether you ever canceled any contract for failure to maintain any resale prices?

A. We never have.

(A document was thereupon marked for identification "Respondents' Exhibit No. 210-A and 210-B.")

By Mr. Gentholts:

Q. Mr. Benfield, showing you Respondents' Exhibit 210-A and 210-B, I will ask you what that is.

A. This is an agreement that we drew up—

Q. What do you mean by "we"?

A. Steel & Tubes in connection with Fretz-Moon, to cover certain distributors who did not choose to buy on a consignment basis and wanted to buy the material on an outright purchase basis, so we drew up this form of agreement and have used it rarely, I will say, but it is available to anybody that wants it.

Q. How long has it been available for us?

A. Oh, I would say three years, maybe more.

3560 Three years that I know of.

Mr. Gentholts: We offer this in evidence, Mr. Examiner (handing a document to Mr. MacIntyre).

Mr. MacIntyre: I would like to ask the witness a question about this.

Trial Examiner Norwood: Go ahead.

Examination on Voir Dire by Mr. MacIntyre.

Q. What is the date on which you started the use of this form?

A. I don't know exactly. I know it has been available for three years. Whether it has been longer than that I couldn't say.

Q. You have no knowledge of it being available prior to that time?

A. I will date it this way: I know we worked it up, and I have been there four years, and I am allowing the fact that it might be as much as a year between that time.

Q. It is possible that it was during the early part of 1939, isn't it?

A. No, sir. More than likely '38.

Q. Approximately 3 years ago is the end of 1938.

A. Well, sure, that is possible, yes.

Q. Or the early part of 1939?

A. Uh-huh.

3561 Q. Is that correct?

A. That could be.

Mr. MacIntyre: Well, my only objection to this is it is just immaterial.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBIT NO. 210-A and 210-P was offered and received in evidence.

By Mr. Gentholts:

Q. Mr. Benfield, what has your practice been on the submission of bids on public openings?

A. Well, we get a lot of inquiries from various public agencies of the Federal Government or cities. We bid whatever way they ask us to bid them and at whatever price we feel like bidding at the time.

Q. Well, is it your custom and practice to bid them at the card?

A. I would say more often than not.

Q. Why?

A. Well, for the same reason you pull down the shade when you go to bed. In other words, you are advertising your price to the world when you make a public bid. We don't particularly think it is advisable to quote on a public bid at a price lower than our card, generally speaking,

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and leave ourselves open to criticism from our jobber
3562 customers who are purchasing material at the card from us.

And there is another reason, and that is that we bid these Government bids quite often just as a matter of form. We know when we submit our prices that we are not going to be low, but if we don't bid consistently we are taken off the bidding list and we don't get the inquiries. So when an attractive inquiry comes along we like to be on their list so we can take a crack at it if we feel like it.

Q. When you submit your bids on public openings, do you know what your competitors are going to bid?

A. No, I do not.

Q. Do you have any understanding or agreement with your competitors or these Respondents as to what prices will be bid on public openings?

A. No, sir.

Mr. Gentholts: You may cross-examine.

Trial Examiner Norwood: Did you ever want a Government order bad enough to bid below card on it?

The Witness: Yes, sir. We got a dandy one last spring, $70,000 worth. There are many of them that are small, and every once in a while they come out with a big one, which we are interested in.

Cross-Examination by Mr. MacIntyre.

Q. Mr. Benfield, referring to Respondents' Ex-
3563 hibits 204, 205, 206, 207, and 208, did you make these tabulations up yourself?

A. They were done under my direction, and I did a lot of the work myself.

Q. How recently?

A. Last eight weeks.

Q. At the request of your counsel?

A. Yes, sir.

Q. For use in this case?

A. Yes, sir.

Q. Are you certain that contracts under which shipments are shown by these tabulations to have been made at prices off card were dated at or within a few days of the time on which the orders for the shipments were placed with your company?

A. Generally that is true; yes, sir.

Q. What about that as to some of these large orders that are shown here to have been on the card?

A. Well, I think maybe the best thing to do is to take an example, if you will. They are all marked better.

Q. Well, I am asking you now for your general knowledge, from what you have seen of the shipping papers, orders, and contracts, as to what you are now able to testify to on that point.

A. Well, generally, that is right. Your contract, if there is a contract, is usually signed, and sometimes shortly after that an order is placed against that
3564 contract. Following the order then shipment comes. It may be one lot or several lots.

Q. Isn't it a fact, Mr. Benfield, that there are instances of so-called off-card sales, or sales at so-called off-card prices, listed on these exhibits which involve shipments pursuant to orders dating so long after the date of the actual commitment of your company to that price that you cannot tell us today whether the contract antedated the purchase and the shipment—the order for the shipment and the shipment by one month, two months, three months, or four months?

Mr. Gentholts: Do you understand the question?

Trial Examiner Norwood: Read it.

The Witness: Let me have it. I know what you want, but I would like you to state it again.

Trial Examiner Norwood: Do you want it read?

Mr. MacIntyre: Let us have the question read.

The Witness: All right.

(Question read.)

A. The order antedated the order?

By Mr. MacIntyre:

Q. Referring to the contract, not the purchase of it.

A. In other words, what you mean is that the contract antedated, that is, came before—

Q. That is right.

A. —the actual order.

Q. And shipment.

3565 A. And shipment, sure. The contract always come first, then the order, and then the shipment.

Q. Isn't it true that as to some of those instances it has come before the order and shipment so far in advance

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that you can't tell us today whether it was one month, two months, three months, or four months?

Mr. Taylor: If Your Honor please, I do not see the materiality of that question. I object to it on that ground.

Trial Examiner Norwood: I think you would have to let him find out about this paper.

Mr. Taylor: Then, I request Your Honor to ask Mr. MacIntyre to make an offer on this, as to what he—

Mr. MacIntyre: We are trying to find out now what is meant by these so-called off-card prices.

Trial Examiner Norwood: Objection overruled. Go ahead.

A. Well, all these off-card prices on that tabulation are not substantiated by contracts. Only a few of them are. And where there is a contract behind one of those cases, I would say that we would know pretty definitely the approximate date of that contract.

Trial Examiner Norwood: At the time that the price was agreed on—

The Witness: That is the time—

Trial Examiner Norwood: —it was below the 3566 card; is that right?

The Witness: Yes, sir.

Trial Examiner Norwood: And in subsequent sales you counted that below the card regardless of the prevailing price at the time of shipment?

The Witness: That is right, sir.

The factor that determines whether that is on or off card is the price and the order—I mean the published price and the price in the order.

Trial Examiner Norwood: Suppose the contract price was one thing, and during the execution of the contract the price should go down, and then you bill the remainder of it at the lower price, how would you carry that on the tabulation? At still below card?

The Witness: Well, I don't think I follow you, sir.

Trial Examiner Norwood: Well, up to the time the price was reduced it might be below card. Then the price drops below the contract price, and you sell the remainder of the order at the card price.

The Witness: That is correct; we would.

Trial Examiner Norwood: Would you carry it in your tabulation as on the card or off the card?

The Witness: Off the card.

Trial Examiner Norwood: It would still be below the card?

3567 The Witness: Yes, sir. That was the condition.

Trial Examiner Norwood: It might have been shipped on your card prices at the time of shipment?

The Witness: It might have been, but it was still negotiated at something other than our published position.

By Mr. MacIntyre:

Q. Now, I show you Respondents' Exhibit, for identification, 208-B, and call your attention particularly to the item which is under the column entitled "Invoice, No. 11-173," a so-called off-card price order of $2,317.52. Now, can you tell us what the date of the contract was under which that commitment was made for those orders and shipments?

A. I could refer to my files over there and maybe tell you all about it.

Q. That is the Ford Motor Company.

A. Oh, is that the Ford? I did not recognize it as such.

Q. Do you recall that it is now?

A. No, I do not recall it by the number, but I am assuming that you know.

(Mr. MacIntyre hands a file to the witness.)

The Witness: 1940; is that?

Mr. Gentholts: 1940; yes.

By Mr. MacIntyre:

Q. Your 224 under invoice 11-173, 1940.

A. 224. The quotation on this particular off-

3568 card sale was made in March, 1940, at card No. 80 less 5 percent. At that particular time our published price was card No. 81.

Q. But you can't give us the date of the contract there, can you?

A. Well, no, I cannot, but I judge it was around the end of the month, around the 30th, or maybe the first of April, the latter part of March. The order itself I believe is dated the 4th of April, and the contract negotiation would immediately precede that.

Q. Well, you are surmising on that to a degree, aren't you, Mr. Benfield?

A. Well, perhaps by a matter of three days, but the original correspondence on this thing begins in February.

Q. The first order and shipment was April?

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A. Well, now, the order was entered in April, but I don't think we made shipment until quite a while after that. Shipment was made on September 13, 1940.

Q. Aren't there other instances shown by these tabulations in your so-called off-card prices that you would be just as uncertain in as on that one in telling us as to what date on which you entered into the contract?

A. Yes, you are right, except I have had sad experience with every one of these in off-card business, so I have some first-hand recollection. But that documentary evidence of the contract itself, plus the order and the

3569 invoice and the circumstances as shown by the correspondence—

Q. You are not stating now, are you, Mr. Benfield, that as to the 228 so-called off-card instances at which you have made sales at off-card prices, as shown by your Exhibits 204 to 208, inclusive, are within your present memory and recollection as to dates of contracts?

A. No, sir; I would not dare say that, although I have been delving into this thing lately and have had an opportunity of refreshing my memory on a good many of them.

Q. But your memory and recollection as to many of them is no better than that to which we have just made reference, this item on Respondents' Exhibit, for identification, 208-B; is that correct?

Mr. Gilpatric: I object to the question. I take exception to implying any uncertainty in his memory. He has shown that the negotiations began in February. Now, that places the date of the contract within a two months' period at the most. Now, what is uncertain about that?

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

By Mr. MacIntyre:

Q. Is that correct, Mr. Benfield?

A. I would say that is correct. I can't pin it down to a few days.

3570 And these Exhibits 204 to 208, inclusive, record all sales on card and off-card made by your company during the years 1936 to 1940, inclusive?

A. All direct sales; yes, sir.

Q. That Steel & Tubes made or Republic Steel Corporation, Steel & Tubes Division, made; is that correct?

A. Those are all the direct sale invoices of Steel & Tubes for those years.

Q. And the prices which represent in them as being off-card prices are prices paid by the consumer or contractor; is that correct?

Mr. Gentholts: Do you understand the question, Mr. Benfield?

The Witness: Yes, I do.

A. We don't always know what the contractor ultimately pays on an off-card sale. We allow our distributor one 5 or two 5's or three 5's off the current card, and he negotiates the transaction from there on, generally speaking. Sometimes we know what the contractor actually pays, and sometimes we don't.

By Mr. MacIntyre:

Q. In other words, these exhibits should not be taken as representing that as to your company's products there was as large a percentage of them sold to contractors and consumers at off-card prices as is indicated by 3571 the exhibits themselves; is that correct?

The Witness: I don't understand that, Mr. MacIntyre.

Trial Examiner Norwood: Read it.

(Question read.)

A. We never sold anything to any contractors or consumers. Those prices and those numbers and everything on that tabulation refers to our invoice value and invoice numbers to our own distributors; has nothing to do with the contractor.

By Mr. MacIntyre:

Q. That is my question precisely. You do not know what the contractors or consumers pay for the merchandise, do you, and these do not show?

A. Sometimes we do. But that doesn't show it.

Q. No.

A. But we know sometimes.

Q. In other words, the gross retail card prices which are shown by your price cards, you do not know whether a consumer or contractor paid such prices or not in these transactions shown on these exhibits; is that correct?

A. Some of them we know exactly what they paid.

Q. Yes, but I am talking about the sum total of them, total.

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A. Well, we will have to take them individually then.
Trial Examiner Norwood: Does the blank show which?
The Witness: No, sir. Well, yes, definitely it definitely shows which. That is the jobber's cost.
3572 Trial Examiner Norwood: It shows what the jobber paid you; does it?
The Witness: That is correct, sir.
Trial Examiner Norwood: And not what the consumer—
The Witness: That is right.
Trial Examiner Norwood: —I see.

By Mr. MacIntyre:

Q. In other words, you can't tell by looking at these whether or not the consumer or contractor paid the jobber or wholesaler the full retail card price for the merchandise in question; can you?

A. Not by looking at it, but—

Q. You can't by making any study at all of these; can you?

A. That is correct; you cannot by looking at it.

Q. And the percentages shown on them to have been percentages of sales made at off-card prices would probably be changed if you took into account that last factor that we have just been talking about; is that correct?

A. No, sir; not one cent. I would be willing to stake my knowledge of the business on that.

Q. Why do you feel so certain about that?

A. Well, Mr. MacIntyre, every time a jobber wants a better price it is because he can't get the business at the right price himself. Therefore, he needs support in order to get the business at a competitive price. Now, he
3573 comes to us for that support, and if he needs it he has got to use it or he loses the business.

Q. But you do not know in all instances what he gets for himself out of it; do you?

A. No, we do not know, but we have some pretty good ideas.

Q. In other words, it is a matter of a surmise on your part as to whether or not he had cut below the card price just because he asked you to cut below the card price; is that correct?

A. No, sir; I won't—I won't be able to say that is correct because here is another factor which, maybe, should be explained. We have salesmen out in the field who are

contacting contractors. They even go to work with our jobbers on these particular jobs, and they know exactly what the deal is between the contractor and the jobber many times.

Q. But you don't do that on all of these projects?

A. No, we don't do it on all of them, of course not.

Q. Well, as to those on which you do not do that, you just surmise from something that the jobber tells you as to his need for a better price that he probably isn't getting the full card price; is that correct?

The Witness: Well, would you read that question, please?

Trial Examiner Norwood: Read it.

(Question read.)

3574 A. Well, I would like to think of a better word than "surmise," but maybe that is it. We have pretty good knowledge like—I mean, it is a part of our training and business—

Q. But you don't know—

Mr. Gentholts: Wait a moment. Let him finish.

A. —to know what these fellows tell us. We know that some jobbers can kid the life out of us. Until we learn our lesson we don't believe that, but others tell us the truth, and we know how to act accordingly. That is all a matter of training.

Q. But you don't know of firsthand knowledge, in many of these instances?

A. That is right.

Q. Now, I believe you have already testified that all of these amounts which appear on these exhibits, Respondents' Exhibits 204 to 208, inclusive, under column "On Card" and also under the column entitled "Freight" should be taken as listings of sales orders, shipments that were made at card prices?

A. That is right, sir.

Q. And should be totaled in computing the percentage out of all of those that are shown in the exhibit as the percentage which was sold on card prices; is that correct?

A. The total value shown on the "freight" column is—

Q. And the "On Card"—

3575 A. And the "On Card" equals the total on the last page of the On Card sales.

Q. And should be taken as the total volume of on card prices during the period of time covered by these exhibits?

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A. Correct.

Q. And the only thing that should be charged against—strike that.

And the only thing that should be added to that in order to get the hundred percent of your sales should be these totals of these items under the column "Off Card"; is that correct?

A. Yes, sir. The on card and the off card equal a hundred percent.

Q. And these numerals that appear under the columns entitled "Exhibit No." are merely numbers put there for your convenience in locating some basic material upon which it is based; is that correct?

A. Yes, sir.

Q. And those under the column entitled "F. D. No." or "Invoice No." are references to your invoice numbers?

A. That is correct.

Q. Now, you do not show in type on any of these exhibits the dates on which any of these contracts, orders, or shipments took place; is that correct?

A. That is correct.

3576 Q. But are you now in a position to help us on that question as to when some of these were made, that is, your commitments?

A. Yes, sir.

Q. For example, can you tell us when your first off-card sale took place, which is shown on Respondents' Exhibit, for identification, 204-A?

A. You mean when did we take the order for that sale?

Q. Yes. Yes.

A. We took the order for the sale on the 21st of December, 1945, but the sale itself, of course, was made in January, 1936, shipment and billing of it.

Q. Shipment, yes. Now, your next one—I mean another one in that same column, "Off Card," on that same sheet under your invoice No. 693, your Exhibit No. 12, when did you take the—that is, commit yourself to make the shipments on that?

A. On the 23d of January, 1936. Is that right?

Q. Now, referring to Respondents' Exhibit, for identification, 206-A and B, for the entire year of 1938 your exhibit shows that you only took one order for—I mean at an off card price; is that correct?

A. That is the only one we could find. That is all there was, I guess.

Q. And at what date did that occur?

A. That was—we took the order on the 12th of May, 1938.

Q. All others during that entire year were at

3577 card prices; is that correct?

A. That is correct.

Q. Now, calling your attention to Respondents' Exhibit, for identification, 207-A and B, the first sale order and shipment shown on Respondents' Exhibit 207-A to have been made by your company at an off-card price was—no, the second one instead of the first—is shown to have been made on what date?

A. You mean what date did we take the order?

Q. Yes.

A. On the 23d of December, 1938.

Q. Now, that is the one which is listed under your invoice No. 1575, your Exhibit No. 167, and the amount of it is $976.30; is that correct?

A. That is correct.

Q. And, now, what is the date of the next order which you took and pursuant to which you—no. Strike that. Strike the entire question.

What is the next date on which you made a sale, took an order and made shipments at a price less than your then current card?

A. You mean took an order or made a shipment? There is really a difference there.

Q. Well, whichever comes first, of course. It would be the taking of the—I mean the making the sale.

A. That would be on the first of April, 1939.

3578 Q. And that is shown by your invoice No. 1615, your Exhibit No. 168, and the order in the amount of $915.75; is that correct?

A. Correct.

Q. On Respondents' Exhibit, for identification, 207-A?

A. That is right.

Q. Now, I am calling your attention to Respondents' Exhibit, for identification, 207-B, and directing your attention to your transactions recorded thereon under invoice No. 1725, your Exhibit No. 183, in the amount of $366.03, and also your Exhibit No. 1749, your—that is, your invoice No. 1749, your Exhibit No. 184, in the amount of $552.43. Now, you made no off-card—that is, no sales at off-card prices between those two transactions; did you?

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A. No, we did not.
Q. And what are the dates of those two transactions?
A. September 15, '39, to—
Q. On the first one that I mentioned?
A. On the first one.
Q. And the second one?
A. To October 20, 1939.
Q. Now, I am directing your attention to the transactions recorded on Respondents' Exhibit 208, for identification, and direct your attention particularly to the transactions recorded thereon under your invoice No. 11-173,
3579 your Exhibit No. 224, in the amount of $2317.52, and the transaction under your invoice No. 11000-184, your Exhibit No. 225, in the amount of $1,656.34. Now, did you make any sales between the dates on which those transactions took place at prices off card?
A. You mean did we take any orders?
Q. Make sales, take orders, yes.
A. No.
Q. And what is the date of the first of those two transactions?
A. Thirtieth of March, 1940.
Q. And the date of the second of those two transactions?
A. Second of October, 1940.
Mr. MacIntyre: Off the record.
(Discussion off the record.)

By Mr. MacIntyre:

Q. Now, Mr. Benfield, referring to other transactions on Respondents' Exhibit 208-P and 208-C, the one shown on 208-B under your invoice No. 11-143, your Exhibit No. 223, in the amount of $30.93, took place on February 7, 1940?
A. Correct.
Q. And, referring to Respondents' Exhibit 208-C, for identification, your transaction shown thereon on your invoice No. 11-237, your Exhibit No. 228, in the amount of $2,179.30, took place on what date?
A. How about the ones in between?
3580 Q. Well, I am not going to bother you about those now.
A. This was on the 15th of November, 1940, but there were intervening transactions.

Q. Well, such intervening transactions as did occur are shown—

A. Yes, sir.

Q. —on the exhibits themselves?

A. Yes, sir.

Q. And these dates that you have been giving us are the dates on which you made the sales as to those particular transactions?

A. Took the orders, sir. There is really a difference. You can have all the orders, but if you never ship you don't sell anything.

Q. But those are the dates on which you committed yourself?

A. That is correct.

Q. Now, according to your tabulations—well, before we go into that further, I think we had better know whether or not they are going to be in evidence.

Trial Examiner Norwood: Yes. Is there any objection to them?

(Discussion off the record.)

(There was a short recess taken.)

Mr. MacIntyre: Well, while I am not satisfied that we have as accurate a showing here as the situation de-
3581 serves, if any showing is to be made in this direction, I feel that it is at least somewhat indicative of what the situation is. For that reason I am not going to object to Respondents' Exhibits 204 to 208, inclusive.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBITS NOS. 204-A to 204-D, 205-A to 205-C, 206-A and 206-B, 207-A and 207-B, and 208-A to 208-C, inclusive, were offered and received in evidence.

By Mr. MacIntyre:

Q. Mr. Benfield, referring again to Respondents' Exhibit No. 187, will you point out to me anything in that that you consider to be a request for a price filing which your company made to the Office of Price Administration here in Washington?

A. Gosh, that is—I don't know where to look for it. Isn't that what you would call it?

Q. What?

A. It is a request, isn't it?

Q. Well, point out the portion of it that you consider to be in the nature of a request.

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A. Dear me.

Q. I am not asking you to pass on whether or not it is a request, but what you consider it to be.

A. It says here: "Unless prompt action is taken, however, steel prices may be raised as a result of rising costs and in particular rising wage costs due to re-
3582 cent wage increases.

"This price schedule is issued to assure that for the immediate present steel prices will not be raised."

And then it requests—

Trial Examiner Norwood: Just refer to the paragraph and page.

The Witness: Page 1.

By Mr. MacIntyre:

Q. Now, refer to the page and paragraph of that exhibit which you consider to be in the nature of a request for a price filing with the Office of Price Administration?

A. Oh, well. Gosh, that is going to be quite a search. (Discussion off the record.)

A. Paragraph 4,—or No. 3, paragraph (b).

Q. Page 4 of that exhibit, you consider to be in the nature of a request for filings; is that correct?

A. That is correct.

Q. And that is what you were referring to when you said that there had been a request for a filing?

A. That is correct.

Q. And you weren't referring to anything else, so far as you know?

A. No, sir; so far as I know.

Q. Now, you read into the record out of that same exhibit something about the date December 31, 1940.
3583 Do you recall that?

A. Yes, sir.

Q. Can you point that out to us?

A. In this exhibit?

Q. Yes.

A. Sure. It is on page 2, No. 1, paragraph C-1. Is that right?

Q. Paragraph C-1. You announced prices subsequent to December 31, 1940, haven't you, on rigid steel conduit?

A. Yes.

Q. And they are higher than they were as you had announced them on and before December 31, 1940; is that correct?

A. Yes; that is correct.

Q. And they are evidenced by your price cards No. 84, which are in evidence here; is that correct?

A. That is correct.

Q. And they are included in documents which have been received here this afternoon as Respondents' Exhibit 209; is that correct?

A. Correct.

Q. Now, you have talked to Mr. Gentholts about the buyer getting all the breaks under your specific building contract. You are the one that put forth those provisions in your form to the buyer; didn't you?

A. I didn't write the contract.

3584 Q. I know, but your company put them forward to the buyer?

A. No. I think if you read the contract, it is pretty clear who is responsible under some of these circumstances, but a company always waives them.

Q. Yes, I know, but you say that the buyer always gets the breaks?

A. That is right.

Q. But it is not necessary for you to use that contract unless you felt it to your best interest to use it; is it?

A. Well, that is right.

Q. Well, you use it because you feel it is to your best interest to do so?

A. We use that contract because it is a competitive tool actually.

Q. And it is to your best interest—you feel it is to your best interest to use it; is that correct?

A. Yes, sir.

Q. And that is why you use it?

A. That is right.

Q. And you feel that it is competitive?

A. That is right.

Q. Now, you told us earlier that you couldn't get any more for your product than your competitors get for theirs. Do you remember that?

A. Yes, sir.

3585 Q. Do we, therefore, understand your testimony to mean that—do we, therefore, understand you to testify that when you get all that you can for your product you are getting the same price as your competitors get; is that correct?

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A. No, sir.

Q. Well, will you reconcile those last two answers you made to my questions?

A. Sure. You don't always have competition on a sale. But when you do, then you have price comparison, and when you have price comparison I have yet to see the time when anybody else would pay us any more money for our material than somebody else—somebody else's product.

Q. Well, when you do have bids from more than one manufacturer of conduit, and you bid what you consider to be all that you can get, that is the same as your competitors; is that correct?

A. No; I don't think I understand that quite, Mr. MacIntyre.

Would you read that question, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. No, sir. Somebody may consider all they can get entirely different than what I consider all I can get. That is why we have differences in prices.

By Mr. MacIntyre:

Q. I know, but when you go to the limit of what
3586 you consider that you can get from a buyer, is that the same as the bids of your competitors bidding for the same business from the same buyer?

A. No, sir.

Q. Well, how much above your competitors do you go, then, in order to reach the level of all that you can get from that buyer under such circumstances?

A. Well, if I knew what he was quoting that is, if I knew what my competitor was quoting, I—I could go as far as his price and then maybe get the business, but I don't know what he is quoting.

Q. Well,—

Trial Examiner Norwood: Well, if you go as far as his price, can you get any more if you go higher?

The Witness: No, sir.

Trial Examiner Norwood: Whether you know it or whether you don't?

The Witness: Whether I know what, sir?

Trial Examiner Norwood: What he is charging?

The Witness: Well, if my bid is high, invariably the business is given to the low price man.

By Mr. MacIntyre:

Q. Well, when you go as far as you can in order to get the business and your competitors are also bidding, that means, then, that your bid is the same as your 3587 competitors'; is that correct?

A. No, sir.

Q. Why isn't it?

A. When I go as far as I can, what does that mean. I can go to $10 if the price on our sheeting is $5.

Trial Examiner Norwood: And get the business.

Q. And still get the business? That is what I am talking about, Mr. Benfield.

A. Gosh, you might find a sucker of some kind, but I don't know.

Trial Examiner Norwood: Go ahead.

Q. Well, as a general rule, when you go as far as you can and still get the business, is it your testimony that you have then made the same price as your competitors'?

A. No, sir.

Q. Well, how much further—

A. I would have to see a tabulation with the prices in it to find that out after I have quoted. I would have to find out what they quoted, then I would know.

Q. In other words, you wouldn't know until it was all over whether or not—

A. Sure.

Q. —it was necessary there to bid the same as your competitor in order to get the business.

A. Sure. I wouldn't know whether I had made a 3588 mistake or not until it was all over.

Q. In other words, you wouldn't know until all that has happened whether or not you could have gotten the bid at a higher price; is that correct?

A. Sometimes that happens, too.

Q. Is that correct? Is that correct?

A. Well, to illustrate that, I might quote a price and my competitor might quote a higher price. I could find a middle ground there and still get the business.

Q. But if you quote a higher price than your competitor, you never know until the transaction is over whether or not it is going to get the business; do you?

A. No.

Q. I believe you have already testified on direct, in response to Mr. Gentholts' questions, that there is a

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marked fluctuation in the demand of conduit in one section of the country as compared and distinguished from another section of the country?

A. Yes, sir.

Q. In that connection you mentioned Houston, Texas—

A. Yes, sir.

Q. —as an example, where you had a strong demand and at the same time you were having weak demands in other sections of the country?

A. Yes, sir.

3589 Q. Is that correct?

A. Yes, sir.

Q. That is frequent, isn't it?

A. Not these days, but—

Q. You take the years 1936 to 1939. It was frequent; wasn't it?

A. I would say it was pretty frequent.

Q. In other words, you would have a strong demand in Washington on some occasions, a weak demand in Philadelphia?

A. We would have seasonal demands, too. Your Florida business would be booming in the fall and dead in the winter time.

Q. But in the same seasons you find and have found that Philadelphia would be strong and New York weak in demands for conduit?

A. Well, you are getting pretty close to the same area when you talk about that.

Q. But that has occurred, hasn't it?

A. But to take the Pacific Coast,—

Q. That has occurred, hasn't it?

A. In Philadelphia and New York?

Q. Yes.

A. Well, I don't know. We don't do enough business in either town to speak of.

Q. But you know that it has been strong in Philadelphia when it has been weak in New York; don't you?

3590 A. Yes, sir; when the Government building program is on; yes.

Q. Now, where was this meeting held that you refer to in this Commission's Exhibit 622, in your letter to Mr. L. W. Harston, under date of November 20, 1939?

A. I believe the letter says it was in New York.

Q. Can you name those who were present?

A. No, sir. There were several there, but who was—

Q. Name as many as you can who were present.

A. I would hesitate, Mr. MacIntyre, for the reason that there wasn't everybody there, and as to just who was not I wouldn't know, and if I were to make a guess I might guess the fellow who wasn't there.

Q. Well, let me help you. Do you recall Mr. Newman of the General Electric being present?

A. No.

Q. Mr. Bennett, of the National Electric?

A. If you want some guesses, I can give them to you, but I couldn't say "yes" or "no".

Q. Well, the best you recall?

Mr. Robison: It should be a recollection, however.

Q. Yes; the best recollection you have of those who were present, the very best you can.

A. I don't remember Mr. Bennett at all. I have a hunch Mr. Newman was there.

3591 Q. Mr. Newman?

A. I think so.

Q. And name the others that you consider were there, based on your very best recollection.

A. Mr. Barton was there; I know that. Mr. Walker.

Q. That is, Mr. H. S. Walker of Walker Brothers?

A. Yes, sir. I don't know about Quinn or Collier. They could have been there.

Q. It was a meeting of the—

A. Whether Hawks was there I don't know, either.

Q. And you do not recall whether Mr. Hawks—

A. Haven't you got a record of it? I don't know.

Q. I am trying to get your memory now. I am raking your memory for it.

What caused you to go there?

A. Well, I happened to be in New York at that particular time on some other business. Mr. Barton and I happened to be staying at the same hotel, and he invited me to go over to this meeting, which I did.

Q. He told you it was to be a meeting of the representatives of the Rigid Steel Conduit Association; did he?

A. I don't know. He probably referred to it as a conduit meeting.

Q. An Association meeting?

A. Yes.

3592 Q. Is that correct?

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A. I would say so. I don't know what you would call it.

Q. And in this letter to Mr. Harston, you attempted to cover what things were and what things were not discussed at that meeting, and which were then on your mind; is that correct?

A. Oh, I would cover anything I thought I would be the least bit interested in.

Q. That is what you were attempting to do in this letter,—

A. That is right.

Q. —that is, those things which would be of interest to him?

A. That is right.

Q. Can you recall the first time that you attended a meeting of the Rigid Steel Conduit Association?

A. Gee, I can't. I would say it was in 1938, some time.

Q. Probably running back into 1938?

A. That is right.

Q. You don't know how early in that year? And when was the date of your last attendance?

A. Gosh, I don't even remember that, definitely.

Q. You don't recall how many times you did attend now; do you?

A. No, sir. I wouldn't be able to tell you. They were really more or less a matter of convenience. If I happened to be around—I never was asked by anybody but Mr. Barton to go to the thing. And if I happened to be in the neighborhood at the time I would go along with Mr. Barton. I never made very many special efforts to get there.

3593

Q. What part of Steel & Tubes' sales—that is, Steel & Tubes, Inc., and Steel & Tubes Division of Republic Steel Corporation, are rigid steel conduit?

A. What percentage?

Q. Yes.

A. Oh, it is less than 5 percent.

Q. In other words, 95 percent of its sales are on other products?

A. And in the case of Republic, it is less than a half of one percent.

Q. That is, when you take in all the products of Republic Steel, it would be less than one-half of one percent of its conduit?

A. That is correct.

Q. And yet it is handling all of the conduit which is manufactured by Fretz-Moon; is that correct?

A. Correct.

Q. But still the total is less than one-half of one percent of all of Republic Steel sales?

A. That is right; and Fretz-Moon's business is less than three percent of the whole industry's business.

Q. Now, you have stated that Steel & Tubes, Inc., and Steel & Tubes Division of Republic Steel Corpora-
3594 tion buy from Fretz-Moon on consignment and in turn resell on both consignment and direct. Do you recall that?

A. Yes, sir. If I stated it that way, I would like to clarify it a little bit.

Q. All right.

A. When we consign it to our distributors, then it is consigned to us. When we sell it directly to our distributors, it is sold directly to us. In other words, it just sort of moves through us in one type of sale or another.

Q. In other words, all of the consignments that you take from Fretz-Moon you handle on consignment with different jobbers and all that you handle direct from Fretz-Moon you handle in resale direct?

A. That is right. We are charged with material that we are consigned, but we are billed for the material when we sell it. There is a technical difference.

Q. Is it your testimony that when you and your competitors make the same price quotations on conduit to a buyer that you are competitive?

A. I did not say that.

Q. I am asking you if it is your testimony that such a situation is a competitive one.

A. Well, that depends, Mr. MacIntyre, on what that price is in relation to your published position.

Q. Well, assuming that it is the same as your
3595 published position.

A. Sure, it could be competitive.

Q. If both of them quote their price cards, are they competitive?

A. Sure. It could be.

Q. Well, is that what you have meant by the word "competitive" as you used it in your testimony here?

A. Well, really, when I am talking about competition

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I am talking about the efforts that were made off the card to get business with or without results.

Q. That is what I am talking about now. I am asking you now whether or not that you have used the term "competitive" here to apply to a situation where two or more sellers of rigid steel conduit quote the same price to a buyer.

A. Well, I don't know how to answer that, because it does not happen very often, except that—

Trial Examiner Norwood: Well, would you include that in the term in case it did happen?

The Witness: Well, sure, I would.

By Mr. MacIntyre:

Q. In other words, you consider that a competitive situation?

A. Sure.

Q. And do you consider it a price competitive situation?

A. Well—

3596 Trial Examiner Norwood: Would that be price competition?

The Witness: I don't know. How could you consider it price competitive? That is drawing a pretty fine distinction.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

By Mr. MacIntyre:

Q. Now, I will ask you again, Mr. Benfield, is a situation where two or more sellers of rigid steel conduit quote to a buyer exactly the same price a situation of price competition as you understand those terms "price competition" and as you have used those terms in the record?

A. Mr. MacIntyre, I never used the term "price competition," in the first place, because I do not consider price as the only factor in a competitive situation. It is darn important—pardon me. It is very important.

Q. Well, do you consider—

Trial Examiner Norwood: Well, do you consider raising your price or lowering your price to the exact price of your competitor an act which would make you competitive?

The Witness: Yes, sir; I would.

By Mr. MacIntyre:

Q. You would consider that you are competitive?

A. Particularly if I lower the price.

3597 Q. You would consider that you are competitive?

Mr. Gentholts: He has answered the question.

Trial Examiner Norwood: He has answered the question. Go ahead.

Mr. MacIntyre: Well, if it is taken that he has answered this question in the affirmative I will stop there.

Is it understood that he has answered it in the affirmative?

Trial Examiner Norwood: Proceed.

Mr. Gentholts: Let the record speak for itself.

Mr. MacIntyre: Well, if Your Honor please, I must ask—I do not believe that he has answered the question directly, and I must ask if it is understood by counsel that he has answered it in the affirmative. If it is, I won't press for a direct answer to the question.

Trial Examiner Norwood: He has made an answer. Just proceed.

Mr. MacIntyre: Is it understood that he has answered in the affirmative?

Trial Examiner Norwood: Will you please proceed?

Mr. MacIntyre: That is all.

Mr. Gentholts: No redirect.

Trial Examiner Norwood: Thank you.

Witness excused.

(Witness excused.)

3598 Trial Examiner Norwood: The hearing is now adjourned to reconvene in the Trial Room on the Sixth Floor of the Bar Association Building in New York, 42 West Forty-fourth Street, at 1:30 o'clock p. m., January 5, 1942.

Mr. MacIntyre: Have there been any arrangements made at that office for the handling and storage and care of the Commission's Docket?

Trial Examiner Norwood: I understand that there have, yes.

The counsel have all been notified of this hearing, and I will state that if something should happen which would require us to change the location in New York, I will leave notice with Mr. Franklin O. Kool, general manager of the Bar Association Building at his office, and I will also mail

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notice of it to the counsel; but the notice being on the record, it is understood that no other formal notice will be made.

The hearing is adjourned.

(Whereupon, at 4:05 o'clock p. m., December 19, 1941, the hearing in the above-entitled matter was adjourned.)

3601 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order pursuant to adjournment on December 19. The hearing in Docket 4452 is now reconvened in the Lorelei Room of the Hotel St. George, Brooklyn, New York, due notice having been given of change of location. The hearing is called to order at 1:30 o'clock, p. m., on January 5, 1942.

Please note the appearances.

Mr. Stewart: Mr. Examiner, at page 3449 of the record the following appears; the question is by Mr. MacIntyre; the examination of the witness, Barton:

"Question: Now, you told Mr. Gentholts on direct examination that this consignment stock agreement form of yours which you adopted after Blake had met with you at this meeting of November 20, 1936, merely preceded—I mean, succeeded another stock agreement form—consignment stock agreement form, and you also told him at that time of adopting a specific building contract form?"

The answer is: "That is right."

Now, it depends on how that answer is interpreted as to whether the witness is concurring in Mr. MacIntyre's statement of what he said on direct examination or whether he is talking about the forms of contract succeeding one another, as to what the answer is to mean, because,
3602 if it is intended to interpret that as putting Mr. Blake in the meeting of November 20, 1936, the direct examination shows that Mr. Barton did not say that. I should like to ask Mr. MacIntyre as to just what his position will be with respect to that answer and if he is going to insist that Mr. Blake is at the meeting instead of an acquiescence by the witness in the chronology of the stock agreement forms. The way the question is asked you can see it is very confusing.

Mr. MacIntyre: I would take that as a statement by

the witness that he adopted the so-called Blake contract form after the meeting of November, 1936, both the consignment stock agreement form and the specific building contract form and I think the record otherwise would show that to be the fact.

Mr. Stewart: I should like to know whether you are insisting that Mr. Blake had met with them at the meeting of 1936 because he was not there and he did not say so on direct examination.

Mr. MacIntyre: I would not rest on that fact on that particular answer.

If Your Honor please, before we go ahead with the witness I want to serve notice on the record to respondents at this time that, in view of evidence that was offered in Washington during the last two days of the hearing,
3603 that I will for purposes other than the merits of this case, consider the evidence of Mr. Dell concerning the increase in prices on conduit in the summer of 1941 for the purposes of showing why the Commission should have proceeded as it has in the prosecution of this case.

A. E. NEWMAN was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Bozeman.

Q. By whom are you employed?
A. By the General Electric Company.
Q. What position do you hold in that company?
A. Manager, wiring material sales.
Q. How long have you held that position?
A. About five years.
Q. What are the duties of that position?
A. Supervise the sales of what we call all the roughing in and finishing materials such as conduit.
Q. Prior to being made manager, were you employed in the wiring materials sales division of General Electric Company?
A. I was.
Q. Since what date?
A. I have been in materials sales—I wish you
3604 would repeat that question, if I may.

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Trial Examiner Norwood: Read it.
(The question referred to was read by the reporter.)
The Witness: Since 1933.

By Mr. Bozeman:

Q. How long have you been with the General Electric Company?

A. Going on 32 years.

Q. Mr. Newman, have you been familiar with the manner in which General Electric Company has marketed its Rigid Steel Conduit?

A. I am.

Q. Will you describe generally the method employed?

A. We have first our Rigid Steel Conduit agents. We call them the distributor agents. Then, we have our district managers, and under them we have a sales organization.

Q. Sales organization?

A. That is right.

Q. What are the respective duties of these district representatives, salesmen and agents?

A. The duty of the salesman is to promote with the engineer, contractor, architect, the use of General Electric conduit. The function of a distributor agent is to service the orders which he gets.

3605 Q. Has General Electric Company made any changes in its sales methods or procedure during the period from January, 1933, to January 25, 1941?

A. No.

Q. During the period I have just mentioned, did General Electric Company make any sales outright to those distributor agents?

A. No, sir, we have not.

Q. Mr. Newman, what is the relationship between General Electric Company and General Electric Supply Corporation?

A. The General Electric Supply Corporation is a subsidiary of the General Electric Company.

Q. A wholly-owned subsidiary?

A. A wholly-owned subsidiary.

Q. What is the nature of the Supply Corporation's business?

A. A warehouse; distribute and sell electric products manufactured by the General Electric Company, and other electrical manufacturers.

Mr. MacIntyre: May I have the answer read back?
Trial Examiner Norwood: Read it.
Mr. MacIntyre: The last answer but one.
(The answer referred to was read by the reporter.)

By Mr. Bozeman:

Q. Has the Supply Corporation at all times main-
3606 tained a separate office and separate sales force?
A. Yes, sir. They do.
Q. Was the Supply Corporation a member of the Rigid Steel Conduit Association?
A. No, sir. They were not.
Q. So far as the sale of G. E. or General Electric conduit was concerned, what was the status of the Supply Corporation?
A. Well, they were our agents, the same as any other agent.
Q. I take it from your answer that General Electric Company has agents other than the Supply Corporation?
A. Oh, yes.
Q. So far as the sale of General Electric Company conduit was concerned, has the relationship between G. E. and the Supply Corporation been any different from G. E.'s relationship with any of those other agents?
A. Absolutely not.
Q. Did the Supply Corporation handle conduit of any competitor of the General Electric Company?
A. Generally speaking, no.
Q. Do you know of any instance when it did?
A. I know of only one case.
Q. Mr. Newman, I show you a mimeographed form of agreement. Will you please state what that document is and the purpose for which it has been used?
(Handing witness paper.)
3607 Mr. MacIntyre: Has that been marked for identification?
Mr. Bozeman: No, it has not.
Mr. MacIntyre: I would suggest it be marked for identification.
Trial Examiner Norwood: Mark it.
(The documents referred to were marked "Respondent's Exhibit 211-A, 211-B, 211-D and 211-E" for identification.)

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By Mr. Bozeman:

Q. Mr. Newman, I show you Respondent's Exhibit for identification 211.

Will you please state what that document is and the purpose for which it was used?

(Handing witness document.)

Mr. Bozeman: My question is directed to the mimeographed part of the document.

The Witness: This is a sales agency agreement which we put into effect in 1929 and this particular document is the agency agreement between the General Electric Supply Corporation of Baltimore and the General Electric Company.

By Mr. Bozeman:

Q. Do you know more specifically just what date it was on which that form was adopted?

A. I wouldn't say definitely but I think it was 3608 January 1, 1929—or January 2.

Mr. Bozeman: I offer this in evidence, the mimeographed part of it.

Mr. MacIntyre: There is no foundation laid for this offer. It is objected to because there is no materiality or relevancy shown.

Mr. Bozeman: The materiality is, Your Honor, that there is a charge in the complaint relating to agency contracts and this is—

Trial Examiner Norwood: This is the one that he used, is it?

Mr. Bozeman: Up to a certain date, and it will be shown there were other forms used.

Trial Examiner Norwood: The objection is overruled. Received as marked.

RESPONDENTS' EXHIBITS NOS. 211-A to 211-E, inclusive, were offered and received in evidence.

By Mr. Bozeman:

Q. Mr. Newman, was any change made in that form of agreement?

A. There was a change made in, I think, the latter part of January, 1929.

Q. What was the nature of the change?

A. The nature of the change was a change of date 3609 of reporting sales out of consigned stock.

Q. Will you please look at that form and explain just where the change was made?

A. In this form we permit the agent to report the sales out of stock on the fifth of each month and the new form—the form after this one, we permit them to report on the tenth of each month.

Q. In other words, that was the change that was made?

A. That is right.

Q. Did you send out any letter in connection with that change?

A. No, I didn't, but there was a letter sent out.

Mr. Bozeman: Will you mark this for identification?

(The document above referred to was marked "Respondent's Exhibit No. 212" for identification.)

By Mr. Bozeman:

Q. I show you Respondent's Exhibit for identification No. 12 and ask you whether that was the form of letter that was sent out in connection with the change you have mentioned?

(Handing witness document.)

A. Yes. This is the letter sent out on February 26. I thought it was the latter part of January, but it is in February.

3610 Mr. Bozeman: I offer it in evidence.

Mr. MacIntyre: I would like to ask the witness a question about this.

Trial Examiner Norwood: All right.

Mr. MacIntyre: Mr. Newman, were you connected with the department of the General Electric Company or the General Electric Supply Corporation during the period of time when this document was sent out, or, for that matter, during the period of time when this Respondent's Exhibit 211, to which it relates, was handled?

The Witness: I was connected with the General Electric Company for years. I was assistant to Mr. F. W. Hall.

Mr. MacIntyre: Will you please read the first part of my question back to the witness?

(The record referred to was read by the Reporter.)

Mr. MacIntyre: Now, that word "department" in that question, Mr. Newman, refers to the wiring and materials division.

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The Witness: Mr. F. W. Hall was manager of that department at that time.

Mr. MacIntyre: Were you in the department and that division of those two companies at that time?

Mr. Stewart: I object to that. You asked him
3611 two questions.

Trial Examiner Norwood: The objection is overruled.

The Witness: In 1929—I am trying to remember just where I was in the company.

Trial Examiner Norwood: Do you know anything about the issuance of that at the time it was issued?

The Witness: Not at the exact time, not as to date.

Mr. Bozeman: May I interrupt?

Trial Examiner Norwood: Yes.

By Mr. Bozeman:

Q. May I ask, Mr. Newman, whether or not you know personally that this came from the files of the General Electric Company?

A. That came from the files of my department.

Mr. Bozeman: I submit, Your Honor, that inasmuch as this letter relates to the exhibit which has just been received in evidence, it is admissible.

Mr. MacIntyre: There are a lot of things in the files of the General Electric Company that are not competent and an attempt is being made to put it in through this witness.

Trial Examiner Norwood: Do you object to the proffer?

Mr. MacIntyre: I do, unless there is some founda-
3612 tion laid to show that it is competent, material and relevant. I do not think it has been done.

Trial Examiner Norwood: I will overrule the objection and receive this paper in evidence.

Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

RESPONDENT'S EXHIBIT NO. 212 was offered and received in evidence.

By Mr. Bozeman:

Q. Were there any further changes made in the form of agreement which you testified about a minute ago, that is, Respondent's Exhibit 211?

A. There was another change in 1934.

Q. What was the nature of that change?

A. Changing the reporting date from the tenth of the month to the fifteenth of the month.

Q. Was that change incorporated in the new form of agreement?

A. No, sir; the same form of agreement; the only change was the dates I just mentioned.

Q. But a new form was prepared to reflect that change, is that correct?

A. That is correct.

3613 Mr. Bozeman: Will you please mark this?

(The document referred to was marked "Respondent's Exhibit 213-A, 213-B, 213-C and 213-D" for identification.)

By Mr. Bozeman:

Q. Mr. Newman, I show you Respondent's Exhibit for identification 213, and ask you whether that is the form of agreement which reflected the change you have just mentioned?

(Handing the witness document.)

A. This form incorporates the change I have just mentioned.

Mr. Bozeman: I offer it in evidence.

Mr. MacIntyre: I would like to ask the witness a question or two about this.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: Did you say this took place in 1934?

The Witness: To the best of my knowledge, in 1934, yes, sir.

Mr. MacIntyre: Do you know what part of the year?

The Witness: I wouldn't say definitely, but I think it was somewhere around the spring and somewhere probably around June.

Mr. MacIntyre: My objection to this is that it is immaterial and irrelevant.

Trial Examiner Norwood: Received as marked.

3614 RESPONDENT'S EXHIBIT 213-A to 213-D, inclusive was offered and received in evidence.

By Mr. Bozeman:

Q. Mr. Newman, is the form of agreement contained in Respondent's Exhibit 213 still being used by the General Electric Company?

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A. Yes, the one we are using today.

Q. And it has been used continuously since that change occurred?

A. That is right.

Q. What was the purpose of the changes reflected in the last two exhibits, that is to say, in the letter of February 26, 1929, and in the new form of agreement, Respondent's Exhibit 213—the purposes of the changes?

A. The purposes of the changes were to give our agents more time to get their reports to the General Electric Co.

Q. Who prepared General Electric Company's forms of agency agreements?

A. Our legal department.

Q. During the period from January 1, 1929 to date, has General Electric Company used any form of sales agency agreements other than the two forms that have just been identified here?

A. No, sir. We have not.

Q. Mr. Newman, the record indicates that at a 3615 meeting of the Rigid Steel Conduit Association, held April 4, 1935, which you attended, Messrs. Hodkinson, Walker and Sicard were appointed as a committee to consider the matter of a sales agency agreement—from of sales agency agreement. Did you have any discussions with that committee?

A. No, sir, I did not. As far as I know, the committee never met, at least I know I didn't attend any meetings with that committee.

Q. So far as you know, did the committee ever make any recommendations?

A. As far as I know, they did not.

Q. Mr. Newman, the record indicates that at a meeting of the Rigid Steel Conduit Association, held in New York on September 10, 1936, which you attended, a Mr. Herbert S. Blake asked the members to send him copies of their forms of consignment agency agreements.

Did you at that meeting make any statement regarding the matter of a uniform form of agency agreement?

A. It was stated at that time that we were not interested in any agreement except the one we had in effect at that time.

Q. Mr. Newman, I show you Commission's Exhibit 574. Will you please look at that document?

(Handing witness documents.)

A. Yes, sir.

3616 Q. Do you recall receiving that letter?

A. No, sir, I do not. I do not recall receiving it.

Q. Did you, or as far as you know, anyone else on behalf of the General Electric Company give any consideration to any form of agency contract enclosed with that letter or that may have been enclosed with that letter?

A. We gave no consideration because we had no interest in it.

Q. The record indicates that a meeting of the Rigid Steel Conduit Association was held on December 30, 1936, which you attended, according to the minutes of that meeting; the purpose of the meeting was to discuss a proposed uniform agency contract and other forms prepared by Mr. Blake.

Do you recall any discussion at that meeting of any form of agency contract suggested by Mr. Blake?

A. There might have been some discussion, Mr. Bozeman, and as I mentioned a minute ago, we had our own form and we had no interest in any other form.

Q. Specifically, did you personally participate in any discussion that may have occurred at that meeting relating to agency contracts?

A. Not having any interest in it, I wouldn't take any part in it.

Trial Examiner Norwood: Do you speak from your memory there?

3617 Mr. Bozeman: Is that your recollection?

Trial Examiner Norwood: You seem to be reasoning it out.

Did you or did you not?

The Witness: I did not, sir.

Trial Examiner Norwood: Thank you.

By Mr. Bozeman:

Q. Mr. Newman, did you at any time discuss with Mr. Herbert S. Blake or any of your competitors, the preparation or adoption of a uniform form of consignment agency contract other than as you have already testified regarding the September 10, 1936 meeting?

A. No, sir, I did not.

Q. Did you, or so far as you know, anyone else on behalf of the General Electric Company ever agree with any of the other respondents in this case to adopt and

use any particular form of consignment agency agreement?

Mr. MacIntyre: I believe that is covered by a standing objection of mine as to a conclusion.

Trial Examiner Norwood: Yes.

The Witness: Will you repeat the question?

(The question referred to was read by the Reporter.)

The Witness: We did not.

By Mr. Bozeman:

3619 Q. Did you ever feel any sense of obligation toward any of the other respondents in this case to
3620 use or to continue the use of any particular form of consignment agency agreement?

A. Absolutely not.

Q. Did you at all times feel free to use or discontinue the use of any particular form of consignment agency agreement?

A. I am afraid I didn't hear that question.

Trial Examiner Norwood: Read it.

(The question referred to was read by the Reporter.)

The Witness: Yes.

By Mr. Bozeman:

Q. Mr. Newman, what has been the policy of the General Electric Company since 1933 when you, as I understand it, first became connected with the wiring materials division regarding sales of Rigid Steel Conduit on specific building jobs; I am asking the policy.

A. It has always been our policy when we took an order for a given quantity of material for a specific job that we were covering the material required for that job and only that job, and the order had to stipulate the job and its location, with the electrical contractor that was involved.

Q. Did you give protection, so-called, in those situations?

A. Oh, yes.

Q. What do you mean by that?

3621 A. Well, we protected the quantity of material required for that job, plus or minus ten percent, because there is always liable to be additions or there is liable to be some required, and we also protected the contractor on the price because the contractor had to have a

price on conduit the same as he did on any other building materials.

Q. Has the policy you have just stated in your testimony changed since 1933?

A. No, sir.

Q. In the majority of instances, how has the building job transaction been consummated, that is, by a formal contract or by an order?

A. Well, the majority of cases just by an order.

Q. The receipt and acceptance of an order?

A. That is right, but the order had to stipulate the job and the contract.

Q. Has General Electric Company ever used a form of contract in connection with these specific building jobs?

A. Yes, sir, we have.

Q. Mr. Newman, I show you Commission's Exhibit 687 and ask you to please look at those documents?

(Handing witness documents.)

A. These are our specific building contract forms.

Q. Approximately what time were those forms 3622 adopted?

A. I can't tell definitely just when they were adopted because we have other materials that we sell which are covered by specific building contracts also.

Q. Can you give me any idea as to the year, within a period of two or three years, during which the forms were adopted?

A. Well, I can say, to the best of my recollection, it was the forms which were adopted after I took charge of the position which I now hold.

Q. Who prepared those forms?

A. Prepared by our legal department.

Q. Were those forms used in all cases of specific building job transactions?

A. Oh, no.

Q. Approximately in what percentage of cases were they used?

A. Approximately I would say it was about forty percent of the cases.

Q. And in the remaining percentage of cases the transaction was closed simply by receipt and acceptance of the order, is that right?

A. With the information on that order.

Trial Examiner Norwood: Was that done practically

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the same on the order as is provided by the blank which you just examined?

The Witness: Practically.

3632 By Mr. Bozeman:

Q. Mr. Newman, there are in evidence here as Commission's Exhibit 72-A to 72-Z-79, inclusive, copies of freight rate bulletins and delivery charge booklets of the General Electric Company?

A. Yes.

Q. Are you familiar with the preparation of such bulletins and booklets as used by the General Electric Company?

A. I am.

Q. Who prepared the schedules and booklets which have been used by the General Electric Company?

A. Bulletins—the freight rate bulletins are prepared by our traffic department along with the schedules by the sales department.

Q. Do the sales and traffic departments usually prepare all of those bulletins and booklets?

A. Yes, sir.

Q. As far as you know, from what sources do the sales and traffic departments obtain the information printed

3633 in the freight bulletins?

Mr. MacIntyre: There has been no foundation laid to show these men, what all those people used in the preparation of all these booklets.

Trial Examiner Norwood: Do you know where they received their information from?

The Witness: We have a large traffic department, sir, and they get the traffic—the freight rates from the regular sources, and it is my understanding—

Trial Examiner Norwood: What part of the regular sources?

The Witness: I believe the freight rates set up by the Interstate Commerce Commission.

Trial Examiner Norwood: Go ahead.

By Mr. Bozeman:

Q. Mr. Newman, Commission's Exhibit 9 consisting of the minutes of a meeting of the Rigid Steel Conduit Association, held on December 8, 1946, which you attended, states that there was voted to employ Mr. Charles Donley to keep a freight rate supplement up to date.

Did you participate in any of the discussions leading up to the decision to employ Mr. Donley for that purpose?

A. No. I did not, because we compiled our own and we had no interest in the subject whatever.

Q. Did the General Electric Company ever use the
3634 services of Mr. Donley in the preparation of any of its freight rate bulletins?

A. We did not.

Mr. MacIntyre: May we strike the answer until I can raise an objection to that?

Trial Examiner Norwood: State your objection.

Mr. MacIntyre: This man has not prepared those. He has not been shown to be competent to testify that all the people in the traffic department of the General Electric Company never saw the Donley booklet and used it in connection with their own preparation. He has only stated what his understanding is of what they used, and evidently that understanding is based on hearsay. I ask that this particular statement about the Donley booklet be not let in unless they have previously laid the foundation for it.

Trial Examiner Norwood: Read the question.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Have you answered that from your own knowledge?

The Witness: Yes.

Trial Examiner Norwood: The objection is overruled.

By Mr. Bozeman:

Q. Did you ever meet Mr. Charles Donley?

3635 A. No, sir.

Q. Did you ever receive any communication from him?

A. No, sir.

Q. Did the General Electric Company ever pay any bills for any of Mr. Donley's service?

A. We did not.

Q. Referring to the meeting held December 8, 1936, which I referred to a minute ago and which you attended, did you at that time join in the action taken to employ Mr. Donley in connection with preparation of freight bulletins?

A. I thought I answered that. No. We did not.

Q. Did the General Electric Company ever use any freight bulletins published in the name of the Rigid Steel Conduit Association?

A. No, sir. We did not.

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Q. Mr. Newman, did you, or as far as you know, anyone else on behalf of the General Electric Company ever have anything to do with the so-called transportation committee of the Rigid Steel Conduit Association?

A. As far as I know, nobody in our organization had anything to do with it.

Mr. MacIntyre: That question and that answer demonstrates the propriety of my objections to this question or the form of the question, "As far as you know."

What does he know? Is it anything, or is it much
3636 about such a matter as that? There is no foundation laid to show that he knows or that his answer has given us anything worthwhile.

Trial Examiner Norwood: He laid the foundation there that he is in charge of sales and he is professed to have exact knowledge about the way they got up these rates. You can cross-examine him and if you find he has not, then, you can make your motion to strike the evidence.

Mr. Bozeman: In addition to that, Mr. Newman is listed in various Commission's exhibits as having attended meetings of the Association and, presumably, was the man, if anyone was, among the G. E. employees who would have known General Electric Company's connection with such matters.

Trial Examiner Norwood: Go ahead. Let him tell us all he knows about it.

By Mr. Bozeman:

Q. Mr. Newman, did the General Electric Company send copies of its freight rate schedules or booklets to its competitors?

A. No, sir, we did not.

Q. Did the General Electric Company receive copies of such booklets of its competitors?

A. The only way we received them was when our salesmen or agents sent them in.

Q. Commission's Exhibit 689, consisting of minutes of the meeting of the Association held September 10,
3637 1936, which you attended, states that the members unanimously instructed the officers to prepare, print and publish a freight bulletin on the storedoor delivery problem.

Did you at that meeting join in the direction that the officers prepare, print and publish such a bulletin?

A. No, sir. I did not. As a matter of fact, I took exception to it.

Q. Did you state at that meeting your position on the matter?

A. That we would print our own and handle our own.

Q. Did you write any letter regarding the contents of the minutes of that meeting?

A. I did.

Mr. Bozeman: Will you please mark that?

(The document referred to was marked "Respondent's Exhibit No. 214" for identification.)

By Mr. Bozeman:

Q. Mr. Newman, I show you Respondent's Exhibit for identification, No. 214, and ask you if that is the letter which you wrote?

(Handing witness document.)

A. Yes, sir. That is.

Mr. Bozeman: I offer it in evidence.

Mr. MacIntyre: May I ask the witness a question about this letter?

3638 Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: How did this letter come back into your possession, Mr. Newman?

The Witness: I don't know, Mr. MacIntyre. I remember distinctly writing that letter.

Mr. MacIntyre: You do not know how long you had it or your attorneys have had it?

The Witness: No. I do not.

Mr. MacIntyre: Or where they got it?

The Witness: No, sir.

Trial Examiner Norwood: Any objection?

Mr. MacIntyre: Yes. I object to the letter.

It is incompetent, irrelevant and immaterial.

Trial Examiner Norwood: The objection is overruled.

Receive and mark it in evidence.

RESPONDENT'S EXHIBIT NO. 214 was offered and received in evidence.

By Mr. Bozeman:

Q. Did you at that meeting, referred to in the letter which has just been received in evidence, state that a bulletin on the store-door delivery problem ought to be prepared?

A. No, sir, I had no—

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Mr. MacIntyre: I object to the leading character
3639 of such questions. I think that counsel should be more careful in a statement of those questions and ask the witness what he stated instead of stating something and asking him if he stated that.

Trial Examiner Norwood: I do not think that has done any harm.

Go ahead.

Mr. Bozeman: Will you please mark that for identification?

(The document referred to was marked "Respondent's Exhibit No. 215" for identification.)

Trial Examiner Norwood: We will have a five-minute recess.

(A short recess was taken.)

3640 Trial Examiner Norwood: Proceed, gentlemen.

By Mr. Bozeman:

Q. Mr. Newman, I show you Respondent's Exhibit for identification No. 215 and ask you what that document is?

(Handing document to witness.)

A. That is a letter dated June 24 written by one of my assistants.

Q. Was that written pursuant to your instructions?

A. Yes, sir, it was.

Mr. Bozeman: I offer it in evidence.

Mr. MacIntyre: It is objected to as immaterial.

Trial Examiner Norwood: What is it?

Mr. MacIntyre: I have objected.

Trial Examiner Norwood: The objection is overruled. Received as marked.

RESPONDENT'S EXHIBIT NO. 215 was offered and received in evidence.

By Mr. Bozeman:

Q. Mr. Newman, did General Electric Company ever use a freight rate bulletin knowing it contained an error of any sort?

A. No, sir, it did not.

Q. Mr. Newman, during the period from January
3641 1, 1933, to the commencement of this litigation, did the General Electric Company maintain any local warehouse stocks of conduit except those consigned to agents—I mean other than those consigned to agents?

A. No, sir, we did not.

Q. During that period did General Electric Company have any special arrangements regarding any particular warehouse?

A. It had one in New York.

Q. When was that warehouse installed?

A. Before 1933. I don't know just what date, though.

Q. Will you please explain briefly, Mr. Newman, what the arrangements were that General Electric Company had regarding that warehouse?

A. We have, in New York, a number of agents; we had a consolidated warehouse stock in New York which was available to any one of these agents. And we stood part of the cost of that warehouse.

Q. Did any change in that arrangement occur prior to the commencement of this action?

A. No, sir.

Q. Did any change whatever occur in your policy regarding warehouses prior to the commencement of this action?

A. We had no warehouses.

Q. I see.

Mr. Bozeman: May I have that question read, 3642 please, Mr. Examiner?

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: No, sir.

By Mr. Bozeman:

Q. Did you, or in so far as you know, anyone on behalf of General Electric Company, ever enter into any agreement with any of the respondents in this case regarding the discontinuance of warehouses?

A. No, sir.

Q. Did you ever feel any sense of obligation toward any of the other respondents in this case to refrain from installing any warehouses in any particular parts of the country?

A. No, sir.

Q. Mr. Newman, referring to the period subsequent to January 1, 1933, did you from time to time receive reports from your district representatives, salesmen and agents regarding competitive conditions in various parts of the country?

A. Yes, sir, I did.

Q. In what form were those reports received?

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A. Sometimes by letter, sometimes telephone calls, memorandums, or telegrams.

3643 Mr. Bozeman: Off the record, please, Mr. Examiner?

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. Bozeman: Mr. Reporter, will you please mark these documents for identification?

(The documents referred to were marked "Respondent's Exhibits 216, 217, 218-A and B, 219-A and B, 220, 221, 222-A and B, 223-A and B, 224, 225, 226, 227, 228-A and B, 229, 230-A and B, 231, 232-A, B and C, 233, 234-A and B, 235, 236-A, B, C, and D, 237-A, B, C, 238, 239, 240, and 241-A and B" for identification.)

By Mr. Bozeman:

Q. Mr. Newman, I show you Respondent's Exhibits for identification 216 to 241, inclusive, and ask you whether those documents came from the files of General Electric Company?

(Handing documents to witness.)

A. Yes, sir, they did.

Q. What are those documents?

A. These are information showing the price quoted on specific jobs, public bids, and other sources of information.

Q. Referring to the letters that came to General Electric from outside sources, that is, from agents and other sources, did you see them after they came into the

3644 General Electric Company's offices?

A. Yes, sir.

Q. And of the letters written from the Bridgeport office, were you familiar with those that were written also?

A. Yes, sir.

Q. You were?

A. Yes, sir.

Mr. Bozeman: I offer these in evidence.

Trial Examiner Norwood: Ruling will be withheld until counsel for the Commission has an opportunity to examine the documents.

By Mr. Bozeman:

Q. Mr. Newman, as a result of the reports you stated you received from time to time, did you become familiar

with competitive conditions in the large centers of the country regarding the sale of conduit?

A. Not only from the reports, but from trips I personally made around the country.

3647 Q. Mr. Newman, during the period subsequent to January 1, 1935, did you make any trips to New York to observe and investigate market conditions in the sale of conduit?

3648 A. I did.

Q. Did you on those occasions have discussions with your agents and other representatives?

A. I did.

Q. Will you please state briefly, Mr. Newman, what you learned, that is, what was reported to you, and what you otherwise learned on those trips regarding conditions in New York in so far as they affected the sale of General Electric Company conduit?

Mr. MacIntyre: I object to that question, if Your Honor please, unless any answer this witness is to give will be taken not for the truth of what the other salesmen told him but merely for the facts they might have reported to him from such rumor as he states they did report to him.

Trial Examiner Norwood: I understood the witness was to make a factual answer to that.

What facts did you find?

The Witness: I found this, Your Honor,—

Mr. MacIntyre: If Your Honor please,—

Mr. Bozeman: I wish the witness would be given an opportunity to answer. Continuous objections are just disturbing him.

Trial Examiner Norwood: I will overrule the objection. Go on and answer the question.

3649 The Witness: I found this, Your Honor, that our salesmen and our agents would give me information which they received in the opening of public bids, and as I understand it, anybody can get that information. That is public information. They are—

Mr. MacIntyre: Now—

The Witness: (Continuing) —public.

Mr. MacIntyre: Pardon me a second. If Your Honor please, if he is to give the testimony based on that, I ask it not be received for the truth of it because it is based on tabulations and other information.

Trial Examiner Norwood: Counsel let the witness give an answer and you may make a motion.

Finish your answer.

The Witness: That information would show the price at which conduit was being sold in various territories. In addition to that, our men had available to them information from customers who customarily bought conduit from General Electric as far as showing the prices which were being quoted by other manufacturers and were asked whether or not they wanted to meet those prices.

That, briefly, is the substance of the information.

By Mr. Bozeman:

Q. Will you state what the information was you received?

Mr. MacIntyre: On that question I object because
3650 what was told this witness, if it is to be taken for the truth of it, is incompetent in the form it is being offered.

Trial Examiner Norwood: The objection is overruled. Answer the question.

The Witness: That information would show that conduit was being sold in New York anywhere from ten to twenty-five percent below our published prices.

By Mr. Bozeman:

Q. Will you state what information you received in the same regard in Chicago?

A. We would—

Mr. MacIntyre: The same objection.

Trial Examiner Norwood: The objection is overruled.

The Witness: We would get information of that kind from any part of the United States where our prices were higher than those quoted by other manufacturers from our salesmen, from our district managers.

By Mr. Bozeman:

Q. What was reported to you regarding the situation in Chicago?

A. In Chicago the price was reported to me as being about ten and twelve and fifteen percent, sometimes lower, than our published prices.

3651 Q. Was that true of Boston?

A. That was true of Boston, as a matter of fact.

Trial Examiner Norwood: Can you give me the name of competitors who were reported as selling below the published prices?

The Witness: Your Honor, some of that information is in these letters and reports.

Mr. MacIntyre: If Your Honor please, that information is in the form of this (indicating). From all indications Ford is buying at such and such a price. That is the information shown by respondent's Exhibit No. 219-A for identification.

Trial Examiner Norwood: I will say this, that unless that is reinforced by some accurate information, it will be considered as establishing the facts that they were selling below a card or anything like that.

Mr. Bozeman: But this is a conspiracy case and we are entitled to show—

Trial Examiner Norwood: What came to this man's knowledge.

Mr. Bozeman: Yes.

Trial Examiner Norwood: It will be received to show what came to his knowledge.

Mr. Bozeman: That is the purpose for which it is being offered.

3652 Trial Examiner Norwood: And to show the information on which he acted.

Mr. MacIntyre: I ask that this witness' answers with reference to that particular matter be so limited in its effects then.

Trial Examiner Norwood: I have stated it would be so limited.

Go ahead.

By Mr. Bozeman:

Q. Can you state, generally, what General Electric Company did in order to meet the competitive conditions which you have just described?

What action did the company take as a result of that information?

A. When we felt satisfied those were the conditions we instructed our agents and salesmen to meet those prices.

Q. So you were not able to maintain your published prices—

Mr. MacIntyre: Now, Mr.—

By Mr. Bozeman:

Q. (Continuing) —in those particular—

Mr. MacIntyre: I object to that question as leading and calling for a conclusion of the witness.

Trial Examiner Norwood: The objection is sustained.

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By Mr. Bozeman:

Q. Was General Electric Company able to main-
3653 tain its published prices in the principal cities you just mentioned?

Mr. MacIntyre: It is still objectionable.

Trial Examiner Norwood: I think that is the same question.

Mr. Bozeman: I don't think so, Your Honor. It is not a leading question.

Mr. MacIntyre: It is not quite as leading but still the harm is done and it calls for a conclusion.

Trial Examiner Norwood: Tell me what that situation was, will you please.

The Witness: I would like to say this, Your Honor, that we were able in some cases to get our published prices, but in the majority of the cases we were not.

By Mr. Bozeman:

Q. Are you familiar with the books and records of General Electric Company relating to the sale of Rigid Steel Conduit?

A. Yes, sir.

Q. Are they maintained under your supervision?

A. Yes, sir.

Mr. Bozeman: Mr. Reporter, will you please mark that document for identification?

(The document referred to was marked "Respondent's Exhibit No. 242" for identification.)

By Mr. Bozeman:

Q. Mr. Newman, I show you Respondent's Ex-
3654 hibit for identification No. 242 and ask you to state what that tabulation is?

A. This is a memorandum prepared under my supervision showing our monthly sales from January 1, 1939 to and including January 10, 1941, showing our sales of conduit at our current sheet price and sales of conduit for each month at other than our current sheet prices.

Q. Will you please explain how that document was prepared? That is, the procedure followed in making those tabulations?

A. The clerks who worked on this under my supervision were instructed to tabulate all of the orders received and show whether those orders were received on the card or off the card, including orders for specific jobs or otherwise.

Q. How did you treat deliveries made under previously executed contracts?

A. If that contract or order was taken, say, on January 1, 1941, at the sheet price and the shipment was made, say, in March or April, and assuming that the price had gone up, it would be treated as an order on the sheet. If there was any concession made in the price at the time the order was taken, it would be treated as an order off the sheet.

Q. Mr. Newman, where are the underlying documents from which that information was obtained?

A. They are in Bridgeport, Connecticut.

Q. Are they available for inspection and examina-
3655 tion by representatives of the Commission?

A. The Commission had two men up there the other day who took off some of the information.

Q. But I mean are they available for further examination?

A. Yes.

Mr. Bozeman: I offer that in evidence.

Mr. MacIntyre: I would like to ask the witness a question about that, if I may, Your Honor.

Trial Examiner Norwood: All right.

Mr. MacIntyre: When was this tabulation, Respondent's Exhibit for identification 242, made up, Mr. Newman?

The Witness: Well, it was started I would say at least two months ago. Maybe longer than that. Probably eight or nine weeks ago.

Mr. MacIntyre: For use by your counsel in this case?

The Witness: I assume so; I was asked to get it up by counsel.

Mr. MacIntyre: For use in this case?

The Witness: I assume that is what they had in mind.

Mr. MacIntyre: You never made any use of it in the running of your business, have you?

The Witness: No, sir, I never used that particular form, no, sir.

3656 Mr. MacIntyre: Did you do any of the work yourself on it?

The Witness: No, sir, I did not.

Mr. MacIntyre: Who did?

The Witness: Staff of clerks, and I think it took some —if I remember right, it took some four or five hundred hours.

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Mr. MacIntyre: How many clerks worked on it?

The Witness: There was a group of ten or fifteen men worked on it for days at a time.

Mr. MacIntyre: Will you please name all of them that you can that did work on it?

The Witness: I cannot. I am sorry, Mr. MacIntyre, but I can name at least one or two, but I don't believe I could name all of them.

Trial Examiner Norwood: Any objection?

Mr. MacIntyre: Do you see any objection as to why General Electric Company would not ship us in Washington the invoices for our check against this document?

Mr. Bozeman: Your Honor, I do not see that has anything to do with the admissibility of this in evidence.

You may address that question to me or to Mr. Swope, but I do not think that it is within the witness' jurisdiction.

Trial Examiner Norwood: I think you may ask
3657 counsel that question.

Mr. MacIntyre: Do you have any objection to shipping these to Washington to our office so that we may examine them there?

Mr. Bozeman: This document is being offered on the same basis as the Youngstown tabulations. Whether the company wants to ship those out of its possession and control, you may consult them about it. That has nothing to do with the admissibility of this document in evidence.

Trial Examiner Norwood: Does counsel object?

Mr. MacIntyre: I object, if Your Honor please, unless they are made available to us in Washington or in the hearing room.

I do not ask that they be made available at this time, but I do ask that the General Electric Company make available to us in Washington, at least to clerks that we can have them check the underlying information on which this is based, with such understanding and with the right of checking and later making motions to strike it, I would have no objection to the document at this time.

Trial Examiner Norwood: I am going to overrule the objection and receive the document in evidence, and if this respondent fails to make that supporting data available I will strike that exhibit on motion.

Mr. Bozeman: And we have already stated, those
3658 things are available.

Trial Examiner Norwood: But under conditions that are practicable.

Mr. Bozeman: I wish to state right here and now for anybody's information that wants to hear it, those documents are already available. They have been made available and have been examined.

Trial Examiner Norwood: I will receive the exhibit.

RESPONDENT'S EXHIBIT NO. 242 was offered and received in evidence.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

I will state for the record that if it develops that the Commission hasn't access to that supporting data, I will strike the exhibit.

Mr. Bozeman: They are available. No question about that.

Mr. MacIntyre: May we have an understanding, if Your Honor please, that they will be made available to us either at some hearing or in Washington. Either one.

Mr. Bozeman: I cannot make that assurance because I have no authority to do it at the minute.

3659 Mr. MacIntyre: Unless that assurance is made, I move the document be stricken from the record.

Mr. Bozeman: May I say this generally—

Off the record for a minute, please.

Trial Examiner Norwood: We are on the record now.

Mr. Bozeman: We are on the record?

Trial Examiner Norwood: Yes.

Mr. MacIntyre made a statement that was on the record, and I suppose you would like to answer that on the record.

Mr. Bozeman: It seems to me during this particular hearing Mr. MacIntyre, by various objections and comments and whatnot, has restricted and impeded the presentation of testimony here and in many instances objected to questions phrased in exactly the same form previously in this hearing, and moreover when the Youngstown tabulations went in, they went in pursuant to the understanding the documents could be examined in Youngstown and why a different attitude should be taken here regarding the General Electric Tabulation is beyond me.

Mr. MacIntyre: I wish to say for the record I have never agreed to any understanding on the part of anyone we would be compelled to go to Youngstown to check their

tabulation. It was my thought we ought to be permitted to check those in the city of Washington. They told us they spent twenty-two hundred man hours in working
3660 up their tabulation. This man testified they spent weeks, probably using as many as fifteen men doing it. Obviously, with one man representing the government in this case, it would be impossible for me, if this case would be completed before the end of the War, to get at any check on these documents under the circumstances they are being offered here, and I of course asked what I considered to be fair in giving an opportunity to check the documents.

Trial Examiner Norwood: Now a precedent has been cited here. I want to make it clear that I am going to receive these provided counsel states the supporting invoices are readily available. Now, if these requirements accumulate here, I may stop doing that, because we do not want to make too great a burden on the government to check over each and every respondent's invoice for the last ten years. But for a reasonable number of those in circumstances where it appears that the Commission can examine them just as easily in the Company's office as somewhere else, I will receive them for the time being without creating any precedent.

Mr. Bozeman: This particular tabulation only goes back through 1939.

Trial Examiner Norwood: All right. I will receive it subject to the conditions I have stated.

Off the record.

(There was a discussion off the record.)

3661 Trial Examiner Norwood: Go ahead.

By Mr. Bozeman: Q. Mr. Newman, I note that this tabulation does not go back any further than January 1, 1939.

Will you state why that is so?

A. The question of how long we keep records in our files is entirely under the supervision of our accounting department in Schenectady and they issue instructions when we should destroy documents there and in the case of invoices and orders we keep them only about two years.

Q. In other words, you did not have the invoices for the earlier period?

A. That's right.

Trial Examiner Norwood: Can you testify to the correction of this? Can you verify it in any way?

The Witness: Except that I had to take the word of the people under me that it was correct.

By Mr. Bozeman:

Q. You instructed them to prepare an accurate tabulation?

A. And I know this, that it was checked over several times.

Trial Examiner Norwood: Used all the invoices between those dates?

The Witness: That's right.

3663 By Mr. Bozeman:

Q. Mr. Newman, referring to the period prior to January 1st, 1939, were you familiar—did you keep yourself familiar—with the extent to which General Electric Company conduit was sold off the current price sheet, so to speak?

A. In my—

Q. Was your information such as to—

A. In my position I must know market conditions. I think the condition prior to 1939—

Q. I am not asking for conditions.

Trial Examiner Norwood: We want to know whether you know what percentage was below the card during those prior dates; between those prior dates.

The Witness: Well, it was no better than it was as shown in that particular document.

Mr. MacIntyre: Now, if your Honor please, I move that be stricken until such time I have an opportunity to

3664 ask the witness—

Trial Examiner Norwood: The motion is allowed. I asked the question as to what you knew about that. Just how accurate you can be.

The Witness: I would say that—

By Mr. Bozeman:

Q. Mr. Newman—

Mr. Bozeman: May I ask a question?

Trial Examiner Norwood: Yes, go ahead.

By Mr. Bozeman:

Q. Prior to January 1st, 1939 did you from time to time receive from your subordinates in Bridgeport and from your agents in other parts of the country, reports of sales

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off the card and on the card relating to General Electric Company conduit?

A. Yes, we did.

Q. You did?

A. We did get that information.

Q. Was that information received with sufficient frequency for you to keep track of the extent to which the sales were off the card from time to time?

A. When you say "keep track", what do you mean?

Q. For you to keep informed?

A. I do.

Q. Well, as to the period prior to January 1st, 1939.

3665 A. That's right.

Q. Based on that knowledge or that information, will you please state to the best of your recollection the extent to which sales of G. E. conduit were made off the current cards?

Mr. MacIntyre: I object unless I have an opportunity to demonstrate this witness cannot answer that question and give competent testimony. I think I can do so.

Trial Examiner Norwood: To the best of your knowledge, understanding, and belief are those percentages shown on that paper fairly representative of other times?

The Witness: As a matter of fact, your Honor, I would say prior to 1939 that probably the percentages off the card were higher than those reflected in that memorandum.

Mr. MacIntyre: If your Honor please, I would like to move to strike that unless I am given an opportunity to show it has no foundation.

Mr. Bozeman: I have some more questions.

Trial Examiner Norwood: The motion is denied.

You may cross-examine him on it.

Go ahead.

By Mr. Bozeman:

Q. Mr. Newman, there are in evidence as Com-
3666 mission's Exhibits 54 to 54-Z 65, inclusive, certain price cards of General Electric Company, price sheets, rather.

Are you familiar with the manner in which such sheets were prepared?

A. Yes, sir; I am.

Q. Will you say how long the General Electric Com-

pany has used price sheets in connection with the sale of conduit?

A. As long as I can remember. They were in effect when I—they were using the price sheets when I took over the position.

Q. And when you were first employed in this particular division was—

A. Back in 1933.

Q. Who determines the figures and terms of sale which were placed in G. E. price sheets?

A. That is determined by the sales department.

Q. Were the terms of sale examined and approved by the General Electric Company legal department?

A. Yes, sir.

Q. Before they were printed?

A. Yes, sir; in every case.

Q. Mr. Newman, were any of the figures or terms of sale in any of the General Electric Company's price sheets inserted at the request of Mr. Herbert S. Blake or any
3667 of your competitors?

A. No, sir.

Q. Mr. Newman, each one of the price sheets contained in evidence here of General Electric Company contains a number. Will you explain why that is so; why the price sheets contain a number or bear a number?

A. Well, I would like to say this, that the numbers that we use on our price schedules were in effect when I took over this position and we have continued them. I think the purpose of the numbers so far as we are concerned is to make it easy for our agents to identify them. That is about all.

Q. What would you say as to the reason why the numbers correspond to numbers on the price sheets of other manufacturers?

A. I cannot tell you unless they just turn up that way.

Q. What method was employed by General Electric Company in announcing a change in its published prices on conduit?

A. In every case where we announced a change, we sent out a telegram or a letter. But I think in nearly—in most cases by telegram.

Q. Were the new prices effective immediately upon the announcement?

A. The new prices?

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3668 Q. Did the new prices become effective immediately after the announcement was made?

A. By telegram. As soon as the telegram went out that price became effective.

Q. And usually a new card or price sheets would follow that announcement?

A. That's right.

Q. Referring to your price sheets No. 69 to No. 84, inclusive, which are in evidence here, will you state so far as you know whether the price changes represented by any one of those sheets were announced before the announcement of price changes represented by a competitor's card bearing the same number?

A. I think there was only one case where we announced a price change before we had that information from any outside sources or received it in our own organization that such—that there had been a change in price. And I think that was card 84.

Q. Mr. Newman, referring to the latter part of 1935 and the early part of 1936 what did you understand to be market conditions in connection with the sale of General Electric conduit?

A. Well—

Q. I mean based on the information which you had?

A. I would say that prices were being quoted by
3669 other manufacturers and in some cases we met them, were anywhere from 17 to 25 and 28 per cent off their published prices.

Q. Did General Electric Company endeavor to meet that competition, so to speak?

A. In some cases we did. Probably in the majority of them.

Q. Did you in the early part of March 1936 receive any information of any change in the published prices of conduit by any of your competitors?

A. If I recall rightly, we got telegrams and telephone calls stating that manufacturers had announced a change in price.

Mr. Bozeman: Mr. Reporter, will you please mark these two papers.

(The papers referred to were marked "Respondent's Exhibits 243 and 244" for identification.)

By Mr. Bozeman:

Q. Mr. Newman, I show you two copies of a telegram dated March 12, 1936 and ask you if that was one of the items of information you received.

(Counsel hands document to witness for examination.)

A. (Witness examines document.)

That is right.

Q. From whom was that telegram received?

3670 A. This telegram was received from Mr. D. E. Harris who is vice president of General Electric Supply Corporation in charge of the Pacific Coast operation.

Mr. Bozeman: I offer these in evidence. A telegram and confirmation.

Mr. MacIntyre: There has been no foundation laid for these documents. Therefore I object to them.

Trial Examiner Norwood: The objection is overruled. These will be received simply to show the information that came to this witness and what he acted on.

Mr. MacIntyre: They are not received to establish the truth of the statements contained in them, are they?

Trial Examiner Norwood: Correct.

RESPONDENT'S EXHIBITS 243 and 244, were offered and received in evidence.

By Mr. Bozeman:

Q. Did you receive replies to those telegrams?

A. Yes, sir. I did not but Mr. Crawford did.

Mr. Bozeman: Mr. Reporter, will you please mark those.

(The documents referred to were marked "Respondent's Exhibits 245 and 246" for identification.)

3671 By Mr. Bozeman:

Q. Mr. Newman, I show you Respondent's Exhibits for identification 245 and 246 and ask you to state whether those are the replies which you sent?

A. 245 is a reply by Mr. Crawford to Mr. Harris in reply to that telegram.

And 246 is a night letter which I got out to all of our agents and our sales organization changing the price of conduit.

Mr. Bozeman: I offer these in evidence.

Mr. MacIntyre: No foundation has been laid for those documents.

Trial Examiner Norwood: Received as marked.

RESPONDENT'S EXHIBITS 245 and 246, were offered and received in evidence.

By Mr. Bozeman:

Q. Respondent's Exhibit 245 states that General Electric Company was investigating the report of lower conduit prices.

Do you know whether any investigation was made of the information—rather of the report previously received?

A. There was. I personally called Chicago and New York and Boston to find out whether they had heard
3672 anything of the price change and I got information from my own salesmen that several manufacturers had announced a new price.

Q. Mr. Newman, referring to Respondent's Exhibit 246 was a copy of that sent to any of your competitors?

A. No, sir.

Q. Did you, subsequent to the sending of that last telegram, Respondent's Exhibit 246, publish a new price sheet?

A. After the telegram went out?

Q. Yes.

A. Yes, we did.

Q. And do you recall the number of that price sheet?

A. Yes. It was card 72.

Q. There is in evidence as Commission's Exhibit 7 the minutes of a meeting of the Rigid Steel Conduit Association held in Pittsburgh March 11, 1936 which you attended.

Do you recall that meeting?

A. I don't recall that particular meeting but if the records show I was there, I presume that is correct.

Q. It was held in the Duquesne Club in Pittsburgh.

Does that refresh your recollection?

A. No, sir.

Q. Do you recall whether at that meeting you had any conversation with anyone regarding prices of conduit?

3673 Mr. MacIntyre: I object to the question. The witness stated he did not recall the meeting. How could he recall what took place if he doesn't recall the meeting?

Mr. Bozeman: I do not see any inconsistency between the two.

Trial Examiner Norwood: I think the witness can straighten it out.

The objection is overruled.

Mr. Bozeman: Would you read the question, please?

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: No, sir, I did not because I do not talk prices with other manufacturers.

By Mr. Bozeman:

Q. Do you recall specifically whether at that meeting you stated in substance that if price nibbling did not stop, General Electric Company would put through a real price cut?

A. No, sir, I would not make that kind of statement.

Trial Examiner Norwood: You never did make that statement?

The Witness: How is that, sir?

3674 Trial Examiner Norwood: You did not make that statement?

The Witness: I did not make that statement.

By Mr. Bozeman:

Q. Did you tell anyone at that meeting that General Electric Company intended to change its published prices on conduit?

A. No, sir. As I said before, I do not discuss prices with other manufacturers.

Q. Did any one of your competitors at that meeting tell you they intended to change their published prices?

A. No, sir.

Q. Mr. Newman, do you recall attending a meeting of certain manufacturers of conduit and of certain agents at the Biltmore Hotel in New York on January 6, 1937?

A. I don't recall that date but I recall the meeting.

Q. In the early part of 1937?

A. Yes.

Q. To the best of your recollection will you state what happened at that meeting?

A. At that meeting there was some of my agents or distributors in attendance, and I recall distinctly because one thing that left an impression on me was a memorandum that one of those distributors had showing that the cost of handling rigid conduit had increased and they

3675 asked for consideration on the part of the individual manufacturers who were there, to give some consideration to that increase in cost.

Q. Did you discuss that request with any of your competitors at that meeting?

A. No, sir, because right after the meeting I wanted to get a train and had to hurry to get it and left the meeting.

Q. A train for where?

A. For Bridgeport.

Q. What consideration and thought did you give the request made at that meeting?

A. This memorandum that the distributors or agents had was an itemized memorandum and left a deep impression on me because I did not realize up to that time how much it cost to handle conduit.

I recall that they had a cost—showing both the cost in handling at one time and showing an increase in cost at another.

Q. Did you after the meeting communicate with any of your competitors or Mr. Herbert S. Blake regarding the request made at that meeting?

A. No, sir; I did not.

Q. Did you on behalf of the General Electric Company finally conclude you should take some action on the request?

A. Why, on the way up to Bridgeport I was think-
3676 ing about it to quite some degree and I had it in mind for quite a while. And I felt personally that the distributors and agents are entitled to some consideration—our distributors and agents.

Q. What elements of additional cost led you to that conclusion, if you recall?

A. They had a number of items of cost such as warehousing and handling and Social Security and credit losses and things of that kind; and I think at that time Social Security was one of the things that had caused the increase in cost of handling conduit.

Q. Did you reflect the increased allowance you decided to allow your agents in a new price sheet?

A. I did.

Q. Do you recall the number of that price sheet?

A. No, I do not, not off-hand.

3677 Q. Would it refresh your recollection if I mentioned card 75?

A. It was right around there. Either 75 or 76. I couldn't say definitely which.

Q. Was it the understanding the agents who attended the January 6, 1937, meeting represented all agents as a class or only themselves individually?

A. Well, I do not recall that they stated definitely they represented anybody but themselves.

Trial Examiner Norwood: Did they state definitely they represented themselves?

The Witness: No, but by inference I gathered they did although they did not say they represented anybody.

Trial Examiner Norwood: Did they make any statement at all as to who they represented?

The Witness: Not that I recall, sir.

By Mr. Bozeman:

Q. Mr. Newman, was there ever any understanding or agreement as far as you know that when one manufacturer published new prices on conduit, other manufacturers would do likewise?

A. No, sir, there never was.

Q. Was there any instance where you did not issue a new card after you had found a competitor had done so?

A. I think there was one.

Q. Do you recall what the card number was that 3678 your competitors had?

A. I believe it was card 73 or 74. Right in there somewhere.

Q. Your attention is called to card 84. Will you state so far as you can recall the circumstances and reasons for the issuance of that card?

A. Yes, sir. There were two reasons.

First, the cost of zinc had gone up and, second, we were negotiating a new contract which called for an increase in labor rates.

Q. Referring to card 76, did General Electric Company so far as you know ever send out to its trade any instructions to hold the prices on that card?

A. Not that I know of.

Q. Did you ever tell any representatives of any of your competitors that you had done so or would do so?

A. No, sir.

Q. Did General Electric Company ever notify any of its competitors of its intention to issue a new card; that is, before it issued a new card?

A. Absolutely not.

Q. Did you send copies of G. E.'s new cards to competitors?

A. No, sir.

Q. Did General Electric Company ever get the cards of its competitors?

3679 A. The only way I know we got them was through our agents and our sales organization.

Q. Based on your experience what would you say is the function served by a price card in the conduit industry?

Mr. MacIntyre: That is merely a conclusion. Let's find out what is done and then we can determine what function it serves.

Mr. Bozeman: I expect the witness to limit this to General Electric Company.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question was read by the Reporter.)

Trial Examiner Norwood: Objection sustained.

He can tell what he did with it.

By Mr. Bozeman:

Q. Mr. Newman, so far as the sale of General Electric Company conduit was concerned, what was the purpose of publishing price sheets or what function, rather, did you intend for those price sheets to serve?

A. Well, the purpose of the price sheet was a hope to get that price which we published.

Q. Was your hope always fulfilled?

A. No, it was not, I am sorry to say.

Q. Mr. Newman, the record shows that in a letter from a Mr. F. J. Kennedy to a Mr. I. A. Bennett written

3680 in December, 1937, it is stated that General Electric Company had promised to withdraw their price on so-called Williamsburg power plant job but did not do so and that the whole job was billed at card 72.

Did you ever make such a promise on behalf of the General Electric Company?

A. No.

Furthermore, I do not know Mr. Kennedy—I know who he is but I never met him.

Q. Who would have had authority to make such a promise on behalf of the General Electric Company?

A. Nobody has any authority to make any promise. If any promises are made I probably would be the one, the only one that would make them.

Q. If such a promise were made, would you in the normal course of your business necessarily know about that promise?

Mr. MacIntyre: I object. That is a speculation as to whether or not he would. It depends on a great many things.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

Trial Examiner Norwood: Objection overruled.

The Witness: I thought I answered that a minute ago, Mr. Bozeman, when I said nobody had any authority to make that promise.

3681 Trial Examiner Norwood: If the promise were made are your duties such as—

The Witness: I would know about it, yes, sir.

By Mr. Bozeman:

Q. Was any agreement or understanding ever made by you or so far as you know by anyone else on behalf of General Electric Company with any of the respondents in this case to put out or maintain any particular price card?

A. Absolutely not.

Q. Did you at all times feel free to discontinue the use of any card or issue any new card or to use no card at all?

A. Well, I don't know if I can answer the last part of that question. I think we have to have some guide for selling our material.

Q. Did you ever feel under any obligation toward any of your competitors to use any particular card or any card at all?

A. No, sir.

Q. Referring to General Electric Company's price cards in general, can you state whether each of those cards was issued as the result of an independent exercise of judgment on your part or the part of General Electric Company officials?

A. Yes, sir.

Mr. MacIntyre: That calls for a conclusion also.

3682 Trial Examiner Norwood: Objection overruled.

The Witness: Yes, sir.

By Mr. Bozeman:

Q. Mr. Newman, did the General Electric Company itself ever file any bids on conduit with the Panama Canal Authority or the Navy Department?

A. No, sir.

Q. So far as you know what was the policy of your agents in filing bids on such openings, that is whether the bids would be at card prices or at prices other than card prices?

A. Under our agency agreement they are supposed to follow our prices. We did not know in every case where one of our agents got an inquiry from any of the government departments. Their policy—we had no way of policing the prices which they quoted. They may quote the sheet price or they may quote something else.

Q. Was there any agreement or understanding with any of your competitors or with Mr. Herbert S. Blake that your agents would not bid prices other than card prices?

A. No, sir.

Q. The record shows that E. D. Latham & Company filed bids with the Panama Canal department and the Navy Department. Was Latham one of your agents?

A. Yes, sir.

Q. On whose conduit did Latham usually bid?

A. They quoted on ours.

3683 Q. So far as you know did Latham ever quote on any other conduit?

A. So far as I know they did not.

Q. Of course, your answer would be the same regarding General Electric Supply Corporation?

A. That's right.

Q. The record shows some bids were filed by National Electrical Supply Company. What company was that?

A. National Electrical Supply Company were located in Washington, D. C., and afterwards were taken over by the General Electric Supply Corporation.

Q. Did it usually bid on G. E. conduit?

A. Yes, sir.

Q. Why did General Electric Company become a member of the Rigid Steel Conduit Association?

A. Just what do you mean by Rigid Steel Conduit Association? Are you talking about the last few years or going back before 1933?

Q. Well, as of the earliest date on which you have knowledge.

A. Well, they were members in there when I took over this position.

Q. What was your understanding of the reasons why—

A. Well, the reasons—

Mr. MacIntyre: Now, I object to his speculating
3684 on the reasons why his predecessors joined on the behalf of General Electric Company and General Electric Supply Corporation.

Trial Examiner Norwood: Counsel's point is well taken there.

Mr. Bozeman: I will withdraw that.

By Mr. Bozeman:

Q. Mr. Newman, what were the reasons at that time why General Electric Company continued as a member of the Rigid Steel Conduit Association?

A. When I came into this job the General Electric Company were members of NEMA. They had a rigid conduit section of NEMA. As I was told by my superior at that time, the purpose of it primarily and entirely was statistical and technical development.

Q. What technical matters were you interested in?

A. Well, such as tapers and threads and nipples and thicknesses of steel and matters of that kind.

Q. Would you include in that local standards as set up over various parts of the country?

A. Yes, sir, and as a matter of fact the code, too.

Q. What statistics were you interested in receiving through the Association?

A. The total amount of conduit sold in the industry.

Q. What was the purpose of getting such informa-
3685 tion as that?

A. By getting those figures we could determine our own individual position and we were always interested in knowing what our industry position was.

Q. The figures you obtained were total figures only?

A. That's right.

Q. The minutes of the adjourned annual meeting of the Rigid Steel Conduit Association held January 20, 1938, lists you as a member of a new board of directors stated to have been elected at that meeting. Do you recall that meeting?

A. Yes, sir.

Q. Did you at that meeting consent to serve as a director or accept the office?

A. No, sir. I told—when I was notified of my election I told them I did not think I could serve, that I had other duties which would take up too much time, and they asked me to leave the matter rest for the time being.

Q. The record indicates you were present at meetings of the board on February 8 and March 21, 1938.

Why did you attend those meetings, if you recall?

A. If I recall it was right around that time I took exception to the work being done by our technical engineer and I believe I wrote a letter to someone stating I was not satisfied with his work.

Q. Were you specifically invited to attend either of
3686 those meetings; that is, February 8 or March 21?

A. I think I was invited to attend both of them.

Mr. Bozeman: Mr. Reporter, will you please mark these four documents for identification?

(The documents referred to were marked "Respondent's Exhibits 247, 248, 249, and 250", respectively, for identification.)

By Mr. Bozeman:

Q. Did you have some correspondence with a Mr. I. A. Bennett prior to your attendance at the meeting on February 8; do you recall that?

A. I think that is the correspondence I had that I gave you.

Q. I show you Respondent's Exhibits 247, 248, 249, and 250 for identification and ask whether that is the correspondence?

A. That is the correspondence; yes, sir.

Mr. Bozeman: I offer that in evidence.

Mr. MacIntyre: I make no objection to Respondent's Exhibits 247 to 250, inclusive.

Trial Examiner Norwood: Received.

RESPONDENT'S EXHIBITS NOS. 247, 248, 249, and 250, respectively, were offered and received in evidence.

By Mr. Bozeman:

3687 Q. Did you at either of the meetings referred to on February 8 or March 21 state you would accept the office of director?

A. No, sir, I did not.

As a matter of fact, I told them I couldn't accept.

Q. Did you subsequently by letter decline to accept the office of director?

A. I did.

Q. Did you have some correspondence with Mr. Bennett regarding that matter?

A. Yes, sir, I did.

Mr. Bozeman: Mr. Reporter, will you please mark these for identification?

(The documents referred to were marked "Respondent's Exhibits 251, 252, and 253", respectively, for identification.)

By Mr. Bozeman:

Q. I show you Respondent's Exhibits for identification 251, 252 and 253, and ask you whether those letters are the correspondence you referred to?

A. 251 is a letter I wrote to Mr. Bennett telling him I was sorry I had to decline the office.

252 was his reply.

And 253 was the letter Mr. Parnell wrote at my
3688 request.

Mr. Bozeman: I offer them in evidence.

Mr. MacIntyre: These appear to be cumulative and immaterial.

Trial Examiner Norwood: Received as marked.

The objection is overruled.

RESPONDENT'S EXHIBITS NOS. 251, 252 and 253, respectively, were offered and received in evidence.

By Mr. Bozeman:

Q. Did you ever consider or regard yourself a member of the board of directors of Rigid Steel Conduit Association?

A. No, sir, I did not.

Q. Did you or so far as you know anyone else on behalf of General Electric Company participate in any of the negotiations which led up to the employment of Organization Service Corporation by the Association?

A. Neither I nor anyone else in the General Electric Company had anything to do with it.

Q. I show you Commission's Exhibit 689 and ask you to please look at those minutes.

(Counsel hands document to witness for examination.)

A. (Witness examines document.) Yes, sir.

Q. Did you attend that meeting?

A. Yes, sir.

3689 Q. Do you recall seeing Mr. Herbert S. Blake at the meeting?

A. Yes. That was the first time I met Mr. Blake.

Q. To the best of your recollection what did Mr. Blake state or talk about at that meeting?

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A. I know Mr. Blake spoke at considerable length regarding the Robinson-Patman Act.

Q. Did you at that meeting engage in any conversation with Mr. Blake or participate in the discussions regarding the proposed employment of Mr. Blake's corporation, Organization Service Corporation?

A. No, I did not participate in any conversation. I know there was some conversation regarding employment of the Organization Service Corporation.

Q. Did you at the meeting question Mr. Blake in reference to any problems affecting the industry?

A. No, sir.

Q. But you did, as you have already stated, state your position regarding the new form of agency agreement?

A. That's right.

Q. And you state that that meeting was the first time you ever met Mr. Blake?

A. That's right.

Q. Prior to the meeting had you heard of or been told anything about either Mr. Blake or his corporation?

3690 A. I know that as far as we were concerned we were interested in the continuation of the technical work and gathering statistics.

Q. What were the reasons as expressed to you of the other members of the Association regarding the matter?

A. The other members were thinking along the same lines because one or two of them mentioned it to me. But also they were somewhat puzzled apparently from what they told me regarding their position in connection with the Robinson-Patman Act.

Mr. MacIntyre: I move the answer of the witness be stricken.

Trial Examiner Norwood: Motion allowed.

Mr. Bozeman: I am somewhat mystified as to the reason for that. The question asked was what did his competitors state to him.

Trial Examiner Norwood: Well, he has told him what he judged from what they told him. Now he may tell what they told him.

By Mr. Bozeman:

Q. Referring to the meeting of September 10,

3691 1936, what did the other members present at that meeting tell you as to the reasons why they favored the employment of Organization Service Corporation?

Trial Examiner Norwood: I want you to confine that to your own knowledge and tell us who told you.

Mr. MacIntyre: I would still object to it, if your Honor please, because it is hearsay.

Trial Examiner Norwood: Well, he is proving a state of mind here, I think.

Mr. MacIntyre: And not the statements made to him.

Trial Examiner Norwood: No. Not offered for the statement.

Mr. Bozeman: May I ask Mr. Newman, these minutes which were exhibited to him a minute ago to refresh his recollection as to who was there, to look at them again.

Trial Examiner Norwood: He was one of the—

Mr. Bozeman: One of the members present.

Trial Examiner Norwood: Yes, go ahead, show him that.

(Counsel hands document to witness for examination.)

The Witness: Now, what is the question?

Mr. Bozeman: Read the question, please.

Trial Examiner Norwood: Mr. Reporter, please read the question.

(The question referred to was read by the Re-3692 porter.)

The Witness: As I mentioned, there were three reasons. One was the continuation of technical work with some supervision over the technical engineer. The second was gathering statistics. And the third, everybody seemed to be puzzled—all the members there—all the members of the industry who were there were puzzled about the Robinson-Patman Act and they left they needed some direction along those lines to keep out of difficulty.

Mr. MacIntyre: I move the answer be stricken because the witness has stated states of minds of other people and has not answered the question.

Mr. Bozeman: May I direct another question?

Trial Examiner Norwood: Yes, go ahead.

By Mr. Bozeman:

Q. Referring to the statements—rather to the Robinson-Patman Act, did the other members present make statements to you to the effect they were concerned over the Robinson-Patman Act?

A. That's right.

Q. Did they give that as a reason for their desire to employ Organization Service Corporation?

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A. That's right.

Trial Examiner Norwood: Who was it that made that statement to you?

3693 The Witness: Well, there were several, Mr. Examiner. But I don't recall just what one it was.

Trial Examiner Norwood: You cannot recall any of them?

The Witness: No, sir.

By Mr. Bozeman:

Q. Can you look at the list of members and recall the names of any who made such statements at that meeting?

Trial Examiner Norwood: Do you think you can tell us after refreshing your memory?

The Witness: Refreshing my memory, I would say that probably Mr. Garland and Mr. Collier and one or two others.

Trial Examiner Norwood: I deny counsel's motion. He may cross-examine the witness further about that.

By Mr. Bozeman:

Q. Mr. Newman, at the time of this September 10, 1936, meeting did you know that a Robinson-Patman Act committee had been previously appointed by the Association?

A. No, I don't recall there was, no.

Q. Did you have knowledge of that fact?

A. No, I did not.

Q. Mr. Newman, there is in evidence some minutes of a meeting of November 12, 1937, of the Association,

3694 stating Mr. Blake appointed a committee on existing conditions consisting of Messrs. Newman, Quinn, Morrow, Hawks and Booth.

So far as you know, what was the purpose of that committee?

A. I do not know what the purpose of that committee was, and the committee never met as far as I know. I know I never met with the committee or with any members of the committee.

Q. The record also contains a document, referring to the appointment of a so-called conduit development committee consisting of Messrs. Barton, Carlson of General Electric Company, Frederickson, McIlroy, Beall, Hinkler and Dustman.

Insofar as you know, what was the purpose of the appointment of that committee?

A. That committee sounds like to me that committee was to do some special technical work, and if I recall correctly it was right about—that was the steering committee to consider the thickness of steel in conduit.

Mr. MacIntyre: I move the answer of the witness be stricken. It is clear from the statements made that it is a matter of supposition from the name of the committee as to what it was to do.

Trial Examiner Norwood: Read the question and the answer, please, Mr. Reporter.

3695 (The question and answer referred to were read by the Reporter.)

Trial Examiner Norwood: I think the first part of that should be stricken.

Mr. MacIntyre: If Your Honor please, if the entire answer is not to go out, I would object to any part of it being stricken because I think it shows the basis for the whole answer.

Trial Examiner Norwood: Let it stand.

Motion denied.

By Mr. Bozeman:

Q. Do you of your own personal knowledge know that what you have stated was the purpose of that committee?

A. I do.

I can.

Q. You can so state.

Did General Electric Company ever render to Organization Service Corporation any reports of tonnages of conduit shipped by General Electric Company?

A. Yes, sir, we did.

Q. Specifically what information was shown by those reports?

A. Those reports showed the amount of conduit we shipped. It was a monthly report. And average selling price per ton.

Q. The total tonnage and average price.

3696 A. Average price.

Q. Did you furnish any other figures or information to that corporation, Organization Service Corporation?

A. No, sir.

Q. Did you ever see or have any knowledge of any approved list of wholesalers in the conduit industry?

A. No.

Trial Examiner Norwood: Did you make any reports on capacity?

The Witness: What was that?

Trial Examiner Norwood: Capacity of output.

The Witness: That was not output. That was sales.

Trial Examiner Norwood: Make any report on output?

The Witness: We made no record of output.

By Mr. Bozeman:

Q. Referring to the reports you made to Organization Service Corporation, will you state to the best of your recollection what the purpose of making those reports was?

A. The purpose of the sales was primarily, as I explained before, to get the total of the industry tonnage volume so that we could determine our percentage. The rest of the information we had no interest in at all.

Q. Again referring to the reports insofar as you know did any of your competitors see those particular reports you gave?

A. You mean ours?

3697 Q. Yes.

A. So far as I know they have never seen ours and I can say definitely I have never seen any other manufacturer's.

Q. Did you ever enter into any agreement or understanding as to the proper definition of a wholesaler?

A. Never.

Q. Did you ever see, or so far as you know did Mr. Blake ever prepare any set of business practices for the conduit industry?

A. Not that I know of. I have never seen any.

Q. The record shows that General Electric Company resigned from the Rigid Steel Conduit Association on July 11, 1938.

Was that resignation in written form?

A. Yes, sir, it was.

Mr. Bozeman: Mr. Reporter, will you please mark this paper as Respondent's Exhibit for identification?

(The document referred to was marked "Respondent's Exhibit 254" for identification.)

By Mr. Bozeman:

Q. I show you Respondent's Exhibit for identification 254 and ask you whether that was the letter of resignation?

(Counsel hands document to witness for examination.)

A. (Witness examines document.) Yes, sir, that is.

Mr. Bozeman: I offer it in evidence.

Mr. MacIntyre: This is merely duplicating the
3698 record. It is objected to for that reason.

Mr. Bozeman: It serves another function.

Trial Examiner Norwood: Received as marked.

RESPONDENT'S EXHIBIT 254 was offered and received in evidence.

By Mr. Bozeman:

Q. The letter just received in evidence states that General Electric Company would like to have Mr. Carlson continue to attend meetings of the technical committee as a non-member, and I quote, "So that we may continue the exchange of technical data with the members of the Association," and that General Electric would like to continue to participate in the collection and distribution of, and I quote, "sales statistics," along the lines followed in the past.

A. That's right.

Q. What did you mean by those statements?

A. Well, in the rigid conduit industry or association there has always been a technical committee, as I explained before, for the development of threads and tapers, and nipples and a half dozen other things. We were interested in knowing what progress or changes were taking place in the industry. Therefore, we wanted one of our engineers to sit in the technical meetings as a non-member.

Q. Now, sales statistics.

3699 A. And again going back to sales statistics, we wanted the industry tonnage so that we could determine our industry percentage.

Q. Industry position.

A. Industry position, that's right.

Q. Did the Association grant the request you made in that regard?

A. They did.

Q. Did the General Electric Company, after its resignation, participate in the exchange of technical data and the collection and distribution of sales statistics?

A. We did.

Q. Did General Electric Company, after its resignation, participate in any other respect in the affairs of the Association?

A. No, sir, we did not.

Q. Why did General Electric Company resign from the Rigid Steel Conduit Association?

A. I think that evidence, in referring to Mr. Denton—when I wrote Mr. Bennett saying I was not satisfied with his actions, we were not satisfied with the work being done by Mr. Penn Denton.

Q. Did you, or so far as you know, anyone else on behalf of General Electric Company, ever discuss meetings of the Rigid Steel Conduit Association with any executive
3700 officers of the General Electric Supply Corporation?

A. No, sir, we did not.

Q. Did you ever attend any meeting of the conduit committee of the National Electrical Wholesalers Association?

A. Yes, I did.

Q. Did you at any such meeting discuss prices?

A. No, sir, never did.

Q. Or the subject of local warehouse stocks?

A. No, sir.

Q. Or the subject of a form of sales agency agreement?

A. No. I had no interest in that so I wouldn't have any occasion to discuss it.

Q. Is it your testimony you did not?

A. I did not.

Q. Did you at any of such meetings ever enter into any agreement or understanding with any member of that conduit committee or with any of your competitors regarding prices or warehouse stocks or uniform form of agency agreement?

A. No, sir.

Q. The reports of some of the meetings of the conduit committee I just referred to indicate that certain recommendations were made at some of those meetings such as, for example, the continuance of supplying agents with so-called resale sheets and a limitation of price advances to five per cent steps and no further warehouse stocks.
3701 So far as you recall, what did you deem to be the purpose of those recommendations or rather what did they mean to you?

A. I did not consider them recommendations. The way I interpret them—the way they were presented were simply suggestions on the part of the distributor or agent to each individual manufacturer there to take whatever action he saw fit or deemed fit to take. I never considered them recommendations.

Q. In other words, they were matters presented for study by the manufacturers individually?

A. For individual action. That is the way I considered those.

Q. Did the conduit committee of the National Electrical Wholesalers Association or any member of that committee bring any pressure to bear on the General Electric Company so far as you know to compel compliance with any of those suggestions?

Mr. MacIntyre: I object to the question.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Objection overruled.

State what you know about it.

The Witness: As I understand the question,
3702 whether any pressure was ever brought—

Trial Examiner Norwood: On you.

The Witness: On me. No, sir, none whatever.

By Mr. Bozeman:

Q. Mr. Newman, referring to the meetings of the conduit committee of the National Electrical Wholesalers Association and the meetings of the Rigid Steel Conduit Association which you attended, will you state whether you usually sat through the entire meeting—that is you went in at the beginning of the meeting and sat through the entire meeting?

A. I just couldn't. It was a physical impossibility with me in my position, with the number of lines I have got to handle to sit in and spend a whole day on these meetings.

Q. How often would you say you failed to sit through a meeting?

A. I would say better than 75 or 80 per cent of the time. Just couldn't be done.

Trial Examiner Norwood: I will say before recessing we have been promised a better room tomorrow, so look on the bulletin board when we come in the morning.

We will recess until ten o'clock tomorrow morning.

Mr. MacIntyre: I would like to say, if Your Honor please, before we close the record that I will attempt to complete my study of Respondent's Exhibit for iden-
3703 tification 216 to 241 and send them to you so that you may make your study of them before we meet here tomorrow morning.

(Whereupon, at 5:00 o'clock p. m., January 5, 1942, the hearing was adjourned until January 6, 1942, at 10:00 o'clock a. m.)

3706 PROCEEDINGS.

Trial Examiner Norwood: Gentlemen, we will come to order.

Pursuant to adjournment on yesterday the hearing in Docket 4452 is now reconvened in the Lorelei Room in the St. George Hotel in Brooklyn, New York, at ten o'clock a. m. eastern standard time.

Please note the appearances.

Mr. A. E. Newman will resume the stand for further examination.

A. E. Newman thereupon resumed the stand and testified further as follows:

Mr. Poskanzer: If your Honor please, I would like to have the record note I am reappearing in this case today.

Mr. Gilpatric: Before the witness resumes, may I make a statement, if Your Honor please?

Trial Examiner Norwood: Certainly.

3708 Mr. Bozeman: If Your Honor please.

Trial Examiner Norwood: Yes, Mr. Bozeman.

Mr. Bozeman: I wonder if we could hear from Mr. MacIntyre as to whether he has any objection to the proffer of certain documents yesterday.

Trial Examiner Norwood: Yes. The proffer of respondent's exhibits 216 to 241 for identification.

Mr. MacIntyre: I do have objection to those.

Respondent's exhibits for identification 216, 218-A
3709 and B, 221, 222-A and B, 223-A and B, 224, 230-A and B, 231, 232-A to C, inclusive, 235, 236-A to D, inclusive, 237-A to C, inclusive, 238, 239, 240, and 241-A and B purport to be tabulations of bids and quotations which were submitted by various people to certain prospective buyers. They are not even presented here as tabulations purported to have been made up by this witness nor for that matter by anyone who can vouch for their accuracy or the truth of the statements contained in them. In fact, they show on their face that in many of the instances they were not made by the person who submitted them to the company, and in some instances are not even reported by the person who reported them to the company as being information of his but mere sus-

picions of his as what were included in the bids which were opened.

I have not offered any such material in this case. Certainly the bars have not been let down to that degree in this case, to give license to the respondents to come in and offer tabulations of bids in such manner.

The bids I have offered have been through the men who prepared them and we have had the basic tabulation by the witness on the table for cross-examination as to the truth and correctness of the bids. But here is an entire set of bids that are offered to support the contentions of the respondents.

They are more than rank hearsay. Further, there
3710 are other exhibits in this offer that deal with matters other than bids which are far beyond suspicions.

For example, in Respondent's Exhibit for identification 219-A, there is a statement made by someone who is not here and subject to cross-examination to the effect that from all indications Ford is buying conduit at such and such prices. And the writer states he cannot definitely know who has been getting the business, but he has some hearsay information to the effect that certain men from Youngstown Sheet & Tube Company and the Triangle Company had been seen about the Ford plants. I do not know that it needs any further characterization.

And then I call attention to Respondent's Exhibit for identification 225, which contains the statement, that is in reference to certain reports that were made, and says:

"I believe his statement and I suspect that certain competitors"—

And he goes ahead and attempts to name those he suspects, "had taken such action."

Certainly we are reaching the point in this case where we should have something better than suspicions on which to rest our information.

The same thing can be said about Exhibit 234 and many of the others in the list.

I just do not believe such evidence or such information—
it really is not evidence and should not be received
3711 as evidence—that such information should be received here because it is such a statement of suspicion. Statements of street rumor.

Trial Examiner Norwood: I will have to take the documents and give them study.

In the meantime, Mr. Bozeman can tell us the purpose of these tabulations that have been referred to.

Mr. Bozeman: I think, Your Honor, you already have that as a matter of fact well in mind; namely, they are not offered for the truth of the matters asserted in them. They are offered instead to show the Commission a part of the material on which this witness acted and to show his familiarity with conditions which undoubtedly entered into his judgments. In other words, it is to show his familiarity with market conditions—not for the proof as evidence of the specific matters referred to in them.

Other documents have been admitted here repeatedly on the same theory. I do not see any difference between those and the others which have been admitted heretofore by Your Honor.

Mr. MacIntyre: In reply to that contention, if Your Honor please, I can only say this: That if I had come forward with a group of tabulations which I stated were in support of the complaint but I was not offering them
for the truth of the statements or the accuracy of
3712 them, they could not have been considered material
or relevant to any issues in this case.

The same thing is true here. They would be just as incompetent if respondents offered them as if I offered them. And I certainly cannot rest with any decision which will permit any such evidence as this to go in the record.

Mr. Bozeman: I would like to point out there is a great difference between Mr. MacIntyre's case and ours. It would be true they would be inadmissible if he had offered them as hearsay. The situation is different as far as the respondents are concerned. They are charged here with being members of a conspiracy and they are entitled to state what they acted on, and what was in their minds.

Trial Examiner Norwood: Is the supporting data of these tabulations available to the Commission?

Mr. Bozeman: In each instance they were received from agents and other representatives in the field and they were received attached to letters. Mr. Newman testified yesterday all these documents passed over his desk at one time or other during the period in controversy and represent in part the reports on the basis of which he testified yesterday.

Trial Examiner Norwood: I shall have to retain these

documents and give them some study. I will reserve my ruling.

3713 Mr. Stewart: Mr. Examiner, as I understand it, it seems to me Mr. MacIntyre is losing sight of the purpose for which this is offered.

As I understand it, in a situation of this nature where we are charged with having conspired, it makes no difference whether the information transmitted to one of the respondents is true or not, but the point is on which they acted.

You are trying here to find out whether they conspired.

Trial Examiner Norwood: And it also shows mental attitude to the entire situation.

Mr. Stewart: Correct. And in addition to that you will find in some of these memoranda that the bid number is contained on the document so that all you have to do is to look at the official document to find out whether that information is correct.

But as I see it, it makes no difference whether it is correct or not. The point is, what was it Mr. Newman acted on.

Trial Examiner Norwood: Are any of these tabulations for the purpose of showing that there was a variation in the price bid?

Mr. Stewart: Oh, yes. And if you will look at the official bid you will find that is the case.

3714 Mr. Bozeman: Mr. Examiner, if I may interrupt, they are offered to show reports were made to this witness that there were variations.

Trial Examiner Norwood: There were, yes.

Mr. Bozeman: And we are offering them to show in fact there were variations but to show he learned there were or believed there were.

Trial Examiner Norwood: If you are trying to prove it that way, you will have to have the supporting data here.

No use discussing it further until we study the papers, and I will give you an opportunity to say something about it thereafter.

I will reserve the ruling on that.

Proceed with the examination of this witness.

Mr. MacIntyre: If Your Honor please, in order that you may be more fully informed before you study these for the purpose of determining what your ruling is to be,

may we have a statement from respondent's counsel as to whether or not they intend to argue from such great bulk of material such as this which is included in this offer and which was included in an offer by Mr. Stewart at the time Mr. Quinn was on the stand and offered by Mr. Houston at the time Mr. Bennett was on the stand and others of like character—that they are to rely upon
3715 those and argue from them that there were numerous reports received by respondents from the field that there were various prices being voted on the card and, therefore, there must have been prices off the card as shown by the reports.

Trial Examiner Norwood: What does counsel say to that?

Mr. Bozeman: As far as I am concerned, I have stated we are not offering these for the truth of the matter asserted in the documents.

Trial Examiner Norwood: Or to argue from them there were variations in prices?

Mr. Bozeman: In the abstract, no.

Trial Examiner Norwood: That is based on this particular evidence.

Mr. Bozeman: We are offering them to you to show part of the material on the basis of which Mr. Newman, for example, acted in reaching his judgment.

Trial Examiner Norwood: That is clear.

I will withhold ruling.

Go ahead.

Direct Examination (Continued) by Mr. Bozeman.

Q. Mr. Newman, the record shows there was a meeting of the Rigid Steel Conduit Association on June 14, 1938, which you attended. Do you recall whether there
3716 was at that meeting any discussion as to whether the industry would permit a manufacturer to deviate from card 76?

A. No, sir, there was no discussion.

Q. So far as you recall, did any such discussion ever occur at any meeting attended by you?

A. No, sir.

Q. Mr. Newman, did you ever attend any meeting of the Rigid Steel Conduit Association at which it was de-

cided that the manufacturers' jobbers would have to maintain their agency agreements?

A. No, sir, did not.

Q. Did you ever attend any meeting of the Rigid Steel Conduit Association shortly prior to June 11, 1938, at which a proposed rise in price of conduit was discussed or agreed upon?

A. No, sir.

Q. The record shows there was a meeting of the Rigid Steel Conduit Association on May 4, 1939, which you attended.

Now, so far as you recall, was there at that meeting of May 4, 1939, any discussion of the subject of whether the Pacific coast jobbers were selling or would be required to sell on the basis of card 80?

A. No, sir, there was no discussion of anything of that kind.

Q. The record shows there was a meeting of the
3717 Association on October 12, 1937, at which the minutes indicate you were in attendance.

Was there at that meeting any discussion, agreement or understanding to the effect that the manufacturers would do their best to stick to card 76?

A. No, sir.

Q. Mr. Newman, do you recall attending a meeting of manufacturers in the City of New York, at the New York Athletic Club, shortly after June 22, 1938?

A. Where was that meeting?

Q. New York Athletic Club.

A. No, sir, I never attended any meeting at the New York Athletic Club.

Q. The record indicates you were present at a meeting of the conduit industry in New York City on November 16, 1939.

Did you, at that meeting, participate in any discussion to the effect there would be a price change in conduit?

A. No, sir. I testified yesterday I never discussed prices with other manufacturers.

Q. So far as you recall, was there any discussion of prices of conduit at that meeting?

A. Not that I know of.

Q. Mr. Newman, did you ever attend any meeting of the Rigid Steel Conduit Association or of the Conduit Committee of the National Electrical Wholesalers Associa-

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3718 tion or the Rigid Steel Conduit industry which was attended by Mr. Arnold H. Friend or Mr. M. B. Austin?

A. No, sir.

Q. Mr. Newman, how long has General Electric Company used the basing point system in its sale of conduit?

A. Well, ever since I have—prior to the time I took the position, so far as I know. It was there when I took the position over.

Q. So far as you know, why did General Electric Company use the basing point system in the sale of conduit?

A. I don't know, excepting possibly it was to meet the conditions of—

Mr. MacIntyre: Now I object. The witness stated he does not know, and I object to his explanation.

Trial Examiner Norwood: Objection sustained.

By Mr. Bozeman:

Q. Mr. Newman, will you state your own knowledge, in so far as you know or in so far as you have personal knowledge of the matter, why your department continued to sell conduit on the basing point system, if you have personal knowledge of the matter?

A. It has been my experience since I have taken over this position back since 1933, that the basing point system as used by the General Electric Company was to meet conditions of the other manufacturers.

3719 Q. Has General Electric Company, through its agents, ever quoted prices on conduit F.O.B. factory?

A. Yes, sir, we have.

Q. Can you give any examples of that type of quotations

A. We have quoted F.O.B. factory to the—to our agents, to the Navy Department, and I ran across one in October out on the Coast when I was out there.

3720 Q. To the best of your recollection, what has been stated to you from time to time by purchasers of conduit relating to the question whether they desire F.O.B. mill prices or delivered prices on conduit.

3721 Mr. MacIntyre: I object to that. It calls for hearsay. It calls for indefinite hearsay. Not even specifying who stated what or when.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: I will overrule the objection to that.

You may answer that from your own knowledge.

The Witness: Yes, sir.

Can I have the question read again, please?

Trial Examiner Norwood: Read it.

Mr. Bozeman: Read the question, please.

(The question referred to was reread by the Reporter.)

The Witness: It has been my experience that in the largest percentage of cases the purchaser of conduit requests quotations on delivered price bases. And there is a number of reasons for it.

Mr. MacIntyre: I object to this witness stating any reasons.

Trial Examiner Norwood: He has not stated any.

Mr. MacIntyre: Well, my objection would not be timely if I had waited until after he had stated them. He
3722 has stated there were some and apparently he was getting ready to state them.

Trial Examiner Norwood: Don't state the reason, please.

By Mr. Bozeman:

Q. Mr. Newman, have the purchasers of conduit stated to you any reasons why they preferred one method over the other?

A. They want to know what it costs them.

Mr. MacIntyre: I object to that. It is incompetent.

Trial Examiner Norwood: Answer his question, whether they gave a reason.

The Witness: They have.

Trial Examiner Norwood: Who gave the reasons to you?

The Witness: The—in some cases where I have called on the purchasers of conduit they have given me reasons.

Trial Examiner Norwood: Who were they?

The Witness: Contractors and sometimes large industrial users.

Trial Examiner Norwood: Can you name any of them?

The Witness: Not offhand; no, sir.

By Mr. Bozeman:

Q. Will you state what reasons they gave?

Mr. MacIntyre: I object to that, naming the reasons.

I object to any such indefinite and hearsay testimony
3723 as that. He cannot even tell who they are or when.
Trial Examiner Norwood: Objection sustained.

By Mr. Bozeman:

Q. Based on your experience, what can you say as to the advantages to a purchaser of conduit who is buying conduit on a delivered price basis?

Mr. MacIntyre: I object to that. This man is not a purchaser.

Trial Examiner Norwood: Overrule the objection.

The Witness: Will you repeat the question, please?

Mr. Bozeman: Read it.

Trial Examiner Norwood: Read the question.

(The question referred to was read by the reporter.)

Trial Examiner Norwood: Answer that from your own knowledge, if any conditions you are conversant with may be stated.

The Witness: We have a number of different types of purchasers of conduit.

We have the contractor who may be located in New York and who may be doing a—having a contract to install an electrical system in Kansas City. He wants to know what that conduit costs him in Kansas City, even though his offices may be located in New York. That is one case.

The other case is of the maintenance engineer in an
3724 industrial plant who buys conduit in small quantities,
anywhere from one hundred feet to five thousand feet. He wants to know what it costs him for conduit laid down in his plant.

Now, the contractor wants the price because it takes time to get information of freight rates, and in figuring up the weights and get the eventual cost of that conduit.

I think those two illustrations are probably the best I can give.

By Mr. Bozeman:

Q. Mr. Newman, why did General Electric Company drop the use of Evanston, Illinois, as a basing point and adopt Chicago, Illinois, as a basing point in 1935, so far as you know?

A. Yes. Why?

Q. Yes.

A. Well, that was a condition where we had to meet the

terms and conditions of other manufacturers and we adopted the Chicago base.

Q. You mean some other manufacturers had been quoting on a Chicago base?

A. On a Chicago base and we simply met that condition.

Q. Is freight a substantial part of the cost of Rigid Steel conduit delivered at a point of use or resale which is a distance from the place of production?

A. It is. Of course it varies depending on distance.

3725 Q. In your business as a seller of Rigid conduit have you endeavored to keep yourself familiar with the state of demand for and total sales of conduit throughout the country?

A. I must know all the time.

Q. Based on your experience and observation, what do you say as to whether the demand for and total sales of Rigid conduit have fluctuated and do commonly fluctuate with fluctuations in building activity?

A. They run about parallel.

Q. Do the variations in building activity, and hence in the demand for conduit in one area, correspond generally with the variations in other areas to the best of your knowledge of the matter?

A. They do.

Mr. MacIntyre: May I have that question read?

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: May I change my answer on that?

I did not get the question as clearly before as I did now.

Not necessarily. Some may change—if building goes up in one area and does not in another, that would change the condition. In other words, conduit follows the

3726 trend of building.

3727 By Mr. Bozeman:

Q. Mr. Newman, do you know of any instances where there has been a lowering of the price of conduit which has been followed by an increase in the sales of conduit of General Electric Company?

A. No, sir, have not.

Q. Does your company have costs that are incurred in connection with your conduit business and which remain substantially constant under varying rates of production?

A. We have.

Q. Do such costs constitute a substantial part of the cost of production of conduit under a normal rate of production?

Mr. MacIntyre: I object to that as irrelevant and immaterial.

Trial Examiner Norwood: Objection overruled.

The Witness: It does.

By Mr. Bozeman:

3728 Q. Does your company maintain branch offices in various parts of the country for promotion of sales of Rigid conduit?

A. We do.

Q. Do you find that buyers of conduit will commonly pay any higher price for the conduit produced by General Electric Company than for conduit of like type and size produced by other manufacturers?

A. Never found it yet.

Q. Does General Electric Company prepay freight on its shipments of Rigid steel conduit?

A. Yes, sir, we do.

Q. What are the considerations that enter into the selection and purchase of black enamel or of galvanized conduit by any prospective user, so far as you know?

Mr. MacIntyre: I object to that. He is asking for a statement of the state of mind of a purchaser that this man cannot give.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: If it has been stated to you, you may tell that.

The Witness: It has been stated in some—

Mr. MacIntyre: I object to him stating what some-
3729 body stated to him.

Trial Examiner Norwood: Objection overruled.

The Witness: That under certain conditions, corrosive conditions, chemical reactions, salt reaction, that engineers prefer galvanized conduit to black.

Under other conditions such as residential housing, they prefer black.

By Mr. Bozeman:

Q. Mr. Newman, in what way other than through stressing price consideration, do the salesmen of General Electric

Company seek to develop customers' preference for General Electric conduit?

Mr. MacIntyre: I object to that. We are dealing here with price competition and not with competition in salesmen's personalities.

Trial Examiner Norwood: Objection overruled.

The Witness: Our salesmen are instructed by the headquarters organization to promote the sale of conduit on a basis of quality, service and probably one or two other points I cannot think of at the present moment.

By Mr. Bozeman:

Q. Would reciprocity be one of them?

A. Well, to a certain degree.

Q. Does General Electric Company make it a practice to hold contractors to contract prices in the event of 3730 price reductions?

Mr. MacIntyre: I object to that. It is immaterial and irrelevant as to whether General Electric on some occasion decided to not enforce its contracts.

Trial Examiner Norwood: Overruled.

The Witness: In every case where we have a contract and the price—there is a price decline, in each of those cases the contractor gets the benefit of the lower price.

Trial Examiner Norwood: That is, according to the terms of the contract, isn't it?

The Witness: I am not certain about that. I believe that it is.

By Mr. Bozeman:

Q. Mr. Newman, normally what part of your total volume of sales is from consigned stocks?

A. Under normal conditions the sales out of consigned stocks—run eighty to eighty-five percent of our total.

Q. Are purchasers permitted to take the cash discount when they pay invoices after your stated date for cash discount has passed?

A. No, sir, they are not.

Mr. Bozeman: That is all the questions I have, Your Honor.

3731 *Cross-Examination by Mr. MacIntyre.*

Q. Mr. Newman, does the General Electric Company sell conduit to contractors or jobbers?

A. Contractors and jobbers?

Q. Yes.

A. What do you mean by that, Mr. MacIntyre?

Trial Examiner Norwood: Does it sell conduit to contractors or jobbers?

The Witness: I did not understand the question that way. I understood him to say contractors and jobbers.

By Mr. MacIntyre:

Q. Contractors or jobbers?

A. Contractors or jobbers. We do not sell conduit. Our agents sell conduit for us.

Q. Has the General Electric Company ever submitted bids directly to the Federal Government?

A. No, sir.

Q. On conduit?

A. No, sir, only through our agents.

Q. That would include General Electric Supply Corporation?

A. Yes, sir.

3732 Q. And I believe you stated yesterday the E. B. Latham Company?

A. That's right.

Q. E. B. Latham and Company, I believe that is?

A. That's right.

Q. In so far as the relationship between the General Electric Company and the General Electric Supply Corporation and the relationship between the General Electric Company and the E. B. Latham and Company are concerned in the sale of conduit, is there any difference?

A. No, sir, there is not.

Q. One is as much responsible to General Electric and General Electric is as much responsible for its acts as in the case of the other; is that correct?

A. If I understand your question correctly, our agents, whether they are General Electric Supply Corporation or E. B. Latham and Company or other agents who are not owned by the General Electric Company are treated alike.

Q. I don't think that answers the question.

A. Then I did not understand your question.

Q. General Electric Company is responsible for the acts

of the E. B. Latham and Company as much as it is for the acts of the General Electric Supply Corporation; is that correct?

Mr. Bozeman: Just a minute. Your Honor, I think
3733 the question is framed in an unfortunate manner. The witness does not know the extent of the responsibility.

Trial Examiner Norwood: Overrule the objection. Let him tell us that.

The Witness: If I knew what you meant, Mr. MacIntyre, by "acts", then probably I could answer your question.

By Mr. MacIntyre:

Q. Any acts in connection with offering for sale of conduit, Rigid Steel conduit?

A. Anything that any of our agents do in the way of sale of Rigid conduit, they represent us as our agents. Therefore I assume that we are, you might say, not legally but morally responsible.

Q. You have understood that in your position with the General Electric Company, have you?

A. Yes, sir.

Q. Can you explain why it is that on some occasions the E. B. Latham and Company has submitted bids to the Federal Government higher than the bids which were submitted by the General Electric Supply Corporation?

Mr. Swope: I object to that. That assumes a matter which is not in the record.

Trial Examiner Norwood: Is counsel speaking for the record?

3734 Mr. Swope: Yes.

Trial Examiner Norwood: Please rise.

Mr. Swope: I object on the ground he has not laid the foundation for that question, if there are different bids which—

Trial Examiner Norwood: Mr. Reporter, read the question to me.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Do you know that they have done that?

The Witness: No, sir, I do not know.

Trial Examiner Norwood: Objection sustained.

Mr. MacIntyre: I just want to know if it is going to be necessary to cite to the witness the record in each instance when I state what the facts are in the record.

Mr. Swope: Sure.

Mr. MacIntyre: In order to give foundation to my question. That is the fact which is now shown by the record.

Mr. Swope: I think the witness is entitled to know.

Mr. MacIntyre: It will make a long, drawn-out cross-examination.

Trial Examiner Norwood. If the witness does not
3735 know that happened, I hardly think you can require him to give the reason for it.

Mr. MacIntyre: If the record shows that to be the fact, what is your explanation of it?

Mr. Swope: I object. I think he is entitled to know the circumstances surrounding that instance, if the record does show that.

Mr. Bozeman: Moreover, it is a hypothetical question.

Trial Examiner Norwood: This is cross-examination. Objections overruled. Let's see if he can tell us about it.

The Witness: If I may, I would like to say yesterday in testifying I made the statement that Latham usually quoted on our conduit.

Now, I cannot answer you whether or not in those cases where Latham was either higher or lower, they actually quoted on G. E. conduit.

By Mr. MacIntyre:

Q. Then you do not know and you cannot so testify whether in any particular instance the E. B. Latham Company in submitting bids to the Federal Government were quoting on General Electric conduit?

A. Not in every case, no, sir, I couldn't tell you that.

Q. That is right. Can you distinguish between
3736 cases as to where they did and where they did not?

A. I might to this degree, that if E. B. Latham was to quote anywhere on G. E. conduit and want certain information they might call us for that information, and in that case I would know the circumstances.

Q. But are you prepared at this time to tell us or cite to us each of those instances where they did so call you so that we can distinguish?

A. If I had something to refresh my memory, I might be able to do that.

Q. We will come back to that shortly.

Yesterday you told Mr. Bozeman as to what percentage of your sales was made on and off cards during a particular period of time.

I am going to ask you now, Mr. Newman, if you are able to tell more accurately what percentage of your sales were made on the card prior to three years ago than you are for the period subsequent to three years ago?

3737 Q. It is true, Mr. Newman, you are able to tell us more accurately what percentage of sales that your company made off the card more than three years ago than you are able to tell us what percentage your company made off the card during last year; that is, during 1940?

A. My understanding of that memorandum which 3738 I was asked to look at yesterday was that it was an accurate statement of sales off the card during 1939 and '40.

Mr. MacIntyre: If your Honor please, that is not an answer to my question.

I ask the witness be instructed to answer the question.

Mr. Bozeman: I submit, if Your Honor please, it is an answer to the question and should stand.

Trial Examiner Norwood: I think that is part. It is not sufficient you may ask another question.

By Mr. MacIntyre:

Q. Have you completed that answer, Mr. Newman?

Mr. Bozeman: You want the question read?

The Witness: Yes, please.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

Mr. Bozeman: Read it.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Is that true, or is it not true?

The Witness: I made the statement, Your Honor, that—

Trial Examiner Norwood: I did not ask for an explanation. I am asking whether that is true or not true.

3739 The Witness: Well, the inference I get in the question is that the information which I testified to yesterday was not accurate, and I don't want to testify to that. I am trying to testify what I consider accurate.

Mr. MacIntyre: Read the question again.

Trial Examiner Norwood: Read the question, please, Mr. Reporter, and I will ask you, Mr. Newman, to pay attention.

(The question referred to was read by the Reporter.)

The Witness: Now—

Trial Examiner Norwood: You state whether or not that is a fact and you may give the explanation later.

Mr. Stewart: Mr. Examiner, may I suggest—

Trial Examiner Norwood: Please, please; let's get this answer.

Mr. Stewart: I am not objecting to that, but I am suggesting "is it true" is the bad part of that question.

"Are you able" is all right, but "is it true" I think ought to come out.

Trial Examiner Norwood: This is cross-examination. Go ahead.

The Witness: I have not made a study of the business taken on or off the card prior to 1939, but I can give an estimate if you want it, sir.

Trial Examiner Norwood: Is it true you can tell
3740 better as to the sales made at one time than the other?

The Witness: Yes, I can.

By Mr. MacIntyre:

Q. Why is it that you can tell us more accurately now what percentage of sales your company made off the card more than three years ago than you can tell us as to the percentage it has made in the last three years?

Mr. Austin: If Your Honor please, the witness has not made that statement. In answer to a question of yours he said he could state more accurately with respect to one period than another, but he did not designate the period. Mr. MacIntyre's question assumes he designated the period more than three years ago.

Trial Examiner Norwood: All right, I will permit the witness to straighten it out.

The Witness: The period prior to—during 1937 and 1938, I think that is the period you have reference to—was a buyers' market, and it has been my experience in the conduit business and on the buyers' market the amount of sales made on the card is considerably less than the sales made off the card.

By Mr. MacIntyre:

Q. That still does not answer the question as to how you can more accurately tell us the percentage your company made on and off the card prior to 1938 than you
3741 can tell us the percentage it made on and off the card since that time.

A. Only because it shows that—

Trial Examiner Norwood: Then you were making a factual answer. You are making a reason answer.

The Witness: That's right. I made the statement before I had not made a definite study of the amount of sales off or on the card prior to 1939.

Mr. MacIntyre: Then, if Your Honor please, I move the testimony of this witness be stricken in which he has stated that his company made a certain percentage of those sales off the card during that period of time.

Trial Examiner Norwood: Counsel may renew that motion when he can cite the lines and pages of the transcript.

Mr. Bozeman: I would like to say there is more to his answer than this quibbling would seem to indicate.

Trial Examiner Norwood: That is why I want the reference to the transcript. I want to study the entire situation.

Proceed with cross-examination. You may renew that motion later on.

Mr. MacIntyre: If Your Honor please, that motion I have just made applies to the answer given by the witness running from line 13 to line 16, inclusive, page 3665.

Trial Examiner Norwood: May I see it?

3742 Mr. MacIntyre: Here is a copy of the transcript.

(Counsel hands transcript to Examiner for examination.)

Trial Examiner Norwood: What do you have to say about that, Mr. Bozeman?

Mr. Bozeman: I have not seen the testimony.

Just a minute, please.

I think it is perfectly apparent, Your Honor, that before you give any consideration to a motion of that type that if you think there is any doubt about it, that we should attempt to address to the witness some questions which I think will bring out the facts he had some source of information given to him from time to time regarding—rather, on the basis on which he made the statement. He was head of a particular department which handled the sales of Rigid Steel conduit. He would have been, I think anyone can say, utterly negligent in his duty if he had not kept up with that sort of thing.

Trial Examiner Norwood: In view of the recent answers, I will allow the motion to strike.

Mr. Swope: Just a minute, please, Mr. Examiner.

My recollection is that later on he did testify he got reports from time to time as to sales on and off the card.

Trial Examiner Norwood: Yes. Well,—

Mr. Swope: One moment, please.

3743 The record is full of evidence of his general familiarity with the market.

Trial Examiner Norwood: Of the record, please, Mr. Reporter.

(There was discussion off the record.)

Trial Examiner Norwood: On the record.

The motion is allowed so far as striking of lines 13 to 16 on page 3665 of the record.

Proceed with the cross-examination.

Mr. Bozeman: That does not affect the testimony on page 3664 of the transcript, as I understand it.

Trial Examiner Norwood: It does not affect any other part of the testimony.

We will take a five-minute recess.

(Short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Mr. Newman, I am showing you your testimony, lines 11 to 14, inclusive, on page 3653.

(Counsel hands transcript to witness for examination.)

A. (Witness examines transcript.)

Q. Will you please tell us what period of time you were applying that answer to?

A. 11 to 14, Mr. MacIntyre?

Q. Yes. Was that over all the last seven or eight

3744 years you were applying that?

A. That is true, ever since I have been in the conduit business, Mr. MacIntyre.

Q. Right down to the present time; is that correct?

A. Well, up to within the last sixty days or so.

Q. And what has happened in the last sixty days?

A. In the sixty days I issued instructions to our sales department to state all our published prices—to see what we can do with that.

Q. For the last sixty days you have not deviated at all and do not intend to deviate any more from your published price cards, is that correct?

A. I did not say that.

Q. Then what do these instructions to your salesmen mean?

A. Those instructions to our salesmen probably stand until I see fit, if necessary, to change them.

Q. You have not changed in the last sixty days?

A. I have not changed them yet.

Q. So there has been complete sticking to your cards in that period of time?

A. As close as we can get it, yes.

Q. And you have not deviated in that period of time?

A. No, to my knowledge, we have not.

Q. A short while ago you spoke about 1937 being a buyers' market.

3745 Will you explain what you meant by that term?

A. Well, the demand for conduit was not as great as it is at the present time.

Q. Well, in other words, you did not have during 1937 much of a demand for conduit, compared with later periods or some period since then?

A. Well, some periods since then, the demands have been greater, yes, sir.

Q. And demands for some periods prior to then were greater; is that correct?

A. Prior to 1937, you mean?

Q. Yes.

A. I wouldn't say that was true, necessarily. It might have been and may not.

Q. Would you say, then, there had been a buyers' market for all times prior to 1937 and including 1937?

A. From 1933 to 1938 or 1939 I think we saw the depression period when there was really a buyers' market.

Q. And you mentioned 1937 as being one of those times?

A. Yes.

Q. And you have so treated it in the conduct of your business; is that correct?

A. If you mean by that we met prices that were quoted by other manufacturers, yes.

Q. You consider that is what you are doing when

3746 you properly meet the condition of a buyer's market; is that correct?

A. If we know the facts.

Q. Now, in the submission of bids by the General Electric Supply Corporation and the E. B. Latham and Company to buyers, just what part, if any, does the General Eelctric Company play and is responsible for the submission of those bids?

A. We do not—sometimes we do not know, Mr. MacIntyre, that our agents get those inquiries. The only times

we would know—I want to point out also we are not on the mailing list to get the inquiries of General Electric Company.

Q. In other words, it does not get the inquiries and it does not bid?

A. That's right.

Trial Examiner Norwood: In other words, they are asked for a price confirmation?

The Witness: The agents.

Trial Examiner Norwood: Yes.

The Witness: Not always, no, sir.

Trial Examiner Norwood: Do they sometimes?

The Witness: Occasionally they do. But the only way we know that one of our agents are quoting on a bid is when they want certain information from us, sometimes delivery, sometimes if they feel there is a price situation in that particular territory they ask for a concession. In that case we may know they have such an inquiry.

3747 By Mr. MacIntyre:

Q. Well, in those instances where concessions are not to be given, what part do you play directly in the price quotations?

A. The concessions are not to be given?

Q. Yes.

A. We do not play any part. As I mentioned a moment ago, we don't—sometimes we do not even know they have the inquiry.

Q. Who handles in those instances the price quotations that are submitted as bids?

A. The agents themselves.

Q. You do not know about it until afterwards in many instances; is that correct?

A. That's right.

Q. What are general instructions you give with respect to what they are to bid in such instances?

A. Generally—as a matter of fact, I am pretty sure that our agency agreement states what the agents are supposed to do as far as the prices are concerned.

Q. That is to stick to the cards?

A. That's right. I believe that is part of our agreement.

Q. So you would expect them normally, then, in adhering to your general instructions, to quote the prices pro-

vided for in your price cards, the price cards of the
3748 General Electric Company.

A. With the exception of those cases where they call and ask for a concession.

Q. How, then, is it you were able to testify yesterday in response to one of Mr. Bozeman's questions that no one had made any promise to this Mr. Kennedy with respect to the so-called Williamsburg job that they would not give a concession?

A. I didn't testify.

Mr. Bozeman: I may-- Oh, excuse me.

The Witness: I did not testify to that, Mr. MacIntyre. I testified, if I recall correctly, that no one in the General Electric Company could make any commitment without my knowing it.

By Mr. MacIntyre:

Q. It is not necessary for them to make any special commitment to stick to the cards because your instructions are for them to stick to the cards; is that correct?

A. Our instructions to our agents are to stick to the cards; yes, sir.

Q. So they do not need to get any special instructions from you to stick to the cards?

A. No, we do not give them any special instructions.

Q. How, then, are you able to testify here that some-
one in the General Electric Supply Corporation or
3749 the E. B. Latham and Company or some other jobber did not tell someone else they would stick to the card on a particular job?

A. I don't recall I testified to that. I was speaking for the General Electric Company when I testified yesterday. Not for E. B. Latham or General Electric Supply.

Q. In other words, anything you testified to yesterday concerning the so-called Williamsburg job and the communications to Mr. Kennedy concerning that job should not be taken as applying to anything that the representatives of the General Electric Supply Corporation did or did not do; is that correct?

A. I was not speaking for the General Electric Supply Corporation; no, sir.

Q. Or any of your jobber agents and their representatives in that connection; is that correct?

A. That's right.

Q. Commission's Exhibits 719, 720, 721, 726, 727, 728, 731, 733, 734, and 736 show that the General Electric Supply Corporation and the E. B. Latham and Company in submitting bids to the Bureau of Supplies and Accounts of the Navy Department under seal submitted price quotations in terms of cents per foot to the fourth decimal point identical with bids submitted by competitors.

Can you explain how they arrived at such prices in the submission of those bids?

3750 A. You mean to the fourth decimal point?

Q. Yes.

A. Not unless the particular department of the Government asked for it that way.

Q. Can you explain how that in figuring them out to the fourth decimal point they got exactly the same figure as their competitors did down to the fourth decimal point in those instances?

A. I would have to see the inquiry from the Government as to whether or not they asked for the information on price per foot to the fourth decimal point before I could answer the question. It is possible maybe the department did ask for that information.

Trial Examiner Norwood: Well, assuming they did ask for it, in that form, how could they have managed to do that independently and to reach the same figure—carry it to the fourth decimal place?

The Witness: I have had some experience with government bids.

Trial Examiner Norwood: Yes.

The Witness: I have seen some of the forms although I have not read them entirely and thoroughly. Sometimes the Navy Department asks for prices various ways.

Trial Examiner Norwood: We are not asking that.

You are being asked how you figured that thing so to

3751 produce identical prices to the fourth decimal place.

What is it about your system or your method that enabled everyone to reach that and get the same answer?

The Witness: If they follow our published price, Mr. MacIntyre, they would probably—and if the other manufacturers' published prices are the same as ours, they probably would arrive at the same answer.

By Mr. MacIntyre:

Q. Even down to the fourth decimal point.

A. Well, I don't know. I have never figured it out that far, but I wouldn't say definitely that is true, but it is possible.

Q. In your experience don't you know it does occur?

A. I would say probably it would occur, yes.

Q. And you cannot strike the word "probably" from that answer and state categorically it does occur?

A. Well, if—

Mr. Bozeman: The witness just testified, Mr. Examiner, he never made the computation himself.

Trial Examiner Norwood: Let him answer the question.

The Witness: If it would help, I would say probably they would arrive at the same answer.

By Mr. MacIntyre:

Q. Don't you know they do arrive at the same answer?

3752 A. Maybe they do. I never figured it out myself to the fourth decimal.

Trial Examiner Norwood: Do you know that or don't you know it?

Do you have that knowledge or not?

The Witness: I do not have the knowledge.

By Mr. MacIntyre:

Q. You do not have the knowledge that any of your competitors and yourself have figured prices down to the fourth decimal point in submitting bids to the Federal Government under seal in terms of cents or fractions of cents per foot; is that correct?

A. The only knowledge I have, Mr. MacIntyre, is the published prices which I have seen which are open to the public and a copy of which we have as received at times.

Q. How often do you see public bids?

A. As often as they are sent in by our sales agents, by our salesmen for our agents on his account.

Q. I am showing you Commission's Exhibit 736 which shows that the General Electric Supply Corporation submitted down to the fourth decimal point in terms of cents per foot bids to the Bureau of Supplies and Accounts of

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the Navy Department, the same bids as those submitted by its competitors.

Will you please explain how it was that they got around to such results?

3753 Mr. Stewart: If the Examiner please, I am going to object on the ground, in behalf of my clients that the answer, in view of the fact the witness says he does not know, he did not submit the bids, could at the best be but mere speculation on his part.

My friend has been insisting that we eliminate speculation. I will now insist that we eliminate it. The most he could possibly give you would be a speculative answer how that was arrived at.

Trial Examiner Norwood: The objection is overruled. He may give what information he has or he may state he has no further information.

Go ahead.

The Witness: If I understand your question, it includes both E. B. Latham and General Electric Supply.

By Mr. MacIntyre:

Q. In so far as their bids are shown on that exhibit to be the same as bids submitted by others.

A. The reason I ask, I cannot find the E. B. Latham bid here.

Q. Do you see the bids of the General Electric Supply Corporation there?

A. Yes, I do.

Q. Will you explain how they got the same bids down to the fourth decimal point in terms of fractions of

3754 cents per foot as the other bidders?

A. They have not got the same bid as American Electric Supply or Loman.

Q. Many of the other bids are exactly the same; are they not?

A. That is right.

Q. Can you explain how they are the same or General Electric Supply Corporation's bids are the same as a number of the others?

A. No, I cannot because I do not know just how they figured.

Q. Is your answer the same as to the bid shown on Commission's Exhibit 719?

A. There is only one possibility, and I cannot answer the question definitely, and that is that if they figured our

price from the price sheet from the fourth decimal point, they might arrive at that figure. I have never worked it out personally.

Q. The only explanation you have here is that they used your price sheets in working that out?

A. Yes, sir. I would assume they did.

Q. When price sheets are disregarded and prices are figured in some other way, it is your experience that different bids are submitted by the different bidders?

A. Yes.

Q. That is, as distinguished from this method
3755 which you give as an explanation for the uniformity or identity in the bids on Exhibit 719?

A. In other words, Mr. MacIntyre, to understand your question: if price sheets are disregarded, as I understood you to say—what they may be doing there—we may—ignoring our prices and quote some other price.

Q. Some you would work out and compute in your own office independent of your price sheets?

A. Yes. We may make a concession.

Q. In that case, bids vary in your experience; is that correct?

A. Yes, sir, they would vary.

Q. And your bids and those of your competitors would be different when they are opened by the Federal Government—in fact, have been different when they are so handled; is that correct?

A. Yes, sir, because we may use an entirely different discount than somebody else.

Q. Is it not a fact, then, the only time you and your competitors can be sure they are to be the same—that is your bids and theirs—when submitted under seal—are those instances where you and they used price cards carrying exactly the same prices and providing for exactly the same method in figuring the bids?

A. That's right.

3756 Q. Over what period of time have you served as a member of the board of directors of the Rigid Steel Conduit Association, Mr. Newman?

A. I testified yesterday I did not serve as a member of the board of directors of the Rigid Steel Conduit Association, Mr. MacIntyre.

Q. Is it your testimony you never served?

A. That is my testimony; yes, sir.

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Q. Although and despite the fact you were named as a member of the board of directors?

A. Yes, sir.

Q. Elected to it?

A. That's right. I was elected.

Q. And attended meetings of the board of directors?

A. I may. Mr. MacIntyre, I would like to say this: While it is true I was elected according to the records, I made the statement at the time of my election that I did not think I could serve and I believe I testified to that yesterday.

Trial Examiner Norwood: Did you attend any meeting of the Board?

The Witness: Yes, I attended one meeting. I attended two meetings.

By Mr. MacIntyre:

Q. The General Electric Company has considered the information it was able to secure from the Rigid
3757 Steel Conduit Association of sufficient importance to it to continue paying dues?

A. Yes, sir.

Q. Is it your testimony, Mr. Newman, that the General Electric Company has at no time used the policy of having its consigned stock jobbers report to it sales made out of consigned stocks as of the 25th of the month?

A. Yes, sir. We do not—our agents do not report to us on the 25th of the month. They are permitted to report to us between the first and the fifteenth of the month.

Q. You have never found it necessary, in order to meet competitive conditions, to afford the consignment stock jobbers as much as twenty-five days within a month in which to report consigned stock sales that took place during the previous month; is that correct?

A. That's right. And, furthermore, if we have a price change in the middle of the month, we call for the report immediately.

Q. Mr. Newman, is it your testimony that you know that Mr. Bennett, Major Quinn, and Mr. Walker and others who served as officials of the Rigid Steel Conduit Association, never discussed at the meetings of that organization agency agreements?

Mr. Swope: Did you ask him whether he knew that they had never discussed agency agreements?

3758 Trial Examiner Norwood: Let him answer.
He asked if that were his testimony.
The Witness: Will you read the question?
Mr. MacIntyre: I am asking him if it is his testimony now.
Trial Examiner Norwood: Read the question.
(The question referred to was read by the Reporter.)
The Witness: It is my testimony that I do not know what Mr. Bennett or others discussed, Mr. MacIntyre.

By Mr. MacIntyre:

Q. In other words, you are not attempting to testify here that such discussions did not take place; is that correct?

A. I cannot testify to the discussions carried on by others.

Q. You have told Mr. Bozeman about attending a meeting in Pittsburgh on March 11, 1936, with representatives of your competitors; and you also told him about some things that did not take place at that meeting. That is, you have stated certain things did not take place at that meeting.

Will you please tell us all that you can recall that did take place at the meeting?

A. At that particular meeting?

Q. Yes.

A. Mr. MacIntyre, I could not tell you definitely what took place at all of the meetings because there were
3759 a number of them.

In addition to that, I testified yesterday that I did not sit through all the meetings at all times.

Now I cannot tell you definitely what was discussed at that particular meeting without possibly referring to some records which might refresh my memory.

Q. Would it be necessary to refer to records in order to answer that question any more than it was necessary for you to refer to records in order to answer Mr. Bozeman's question?

A. Very much so.

Q. Why?

A. Because I made the statement that I never discussed prices or carried on conversations such as Mr. Bozeman mentioned with other manufacturers.

Q. Why is it, Mr. Newman, you are so positive and so

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clear in your recollection that you never discussed prices, yet you are not sufficiently clear as to what else you discussed at these meetings?

A. Because there is one thing I know that I do and other things I do not. One thing I do not do is to discuss prices with other manufacturers. That applies to any time or any meeting.

Q. You are also just as positive and just as clear in your recollection that manufacturers did not discuss
3760 prices in your presence during the course of meetings; is that correct?

A. No manufacturer ever discussed prices with me.

Mr. MacIntyre: Mr. Reporter, will you please read that question to the witness?

Trial Examiner Norwood: Read it.

(The question referred to was read by the Reporter.)

The Witness: I never heard any manufacturer discuss any prices while I was around.

By Mr. MacIntyre:

Q. In other words, you are very positive of that?

A. Yes, sir, I am.

Q. But you are not positive as to other things they discussed or talked about in these meetings; is that correct?

A. It depends on what those things are. Some of them may be important enough for me to remember if I had something to refresh my memory.

Q. You are also very positive that they never discussed agency agreements at meetings during the course of your attendance; is that correct?

A. I think I have testified that I already—I think that question has been put to me, Mr. MacIntyre—that I do not recall others talking or discussing it while I was there.

Q. Is it now just a matter of faulty recollection
3761 or can you say you are positive that no such discussions took place during the course of meetings when you were in attendance?

A. I never heard anyone discuss those things while I was at the meeting.

Q. You are positive of that now, are you?

A. Yes, sir.

Q. And you are positive of that, although you cannot at this time recall other things that were discussed?

A. Mr. MacIntyre, I know this; that in the meetings—practically every one of them—regardless of how much time I spent in those meetings, there were some technical matters discussed.

Now I can sit here and talk about threads that were discussed at the meetings in September or January or any other month and papers and things of that kind. Those things are not—to me they are important, but they are important only to the degree that I can carry that message back to our engineers and let them work on them.

Q. And you also told Mr. Bozeman that there had been no discussion during the course of your attendance at meetings of the Rigid Steel Conduit Association concerning the preparation, adoption, or use of specific building job contracts?

Mr. Bozeman: Just a minute.

By Mr. MacIntyre:

Q. (Continuing.) Do you recall that testimony?

3762 Mr. Bozeman: I object to the question on the ground it does not accurately state the question and answer.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: I think he has testified that.

Mr. Bozeman: Your Honor, if I may state what my recollection is: What I asked him and I have a memorandum of the questions here, was whether or not he personally participated in any such discussions and he said no. I did not ask him whether anyone in his presence mentioned the subject or discussed it. I did not put that question to him.

Trial Examiner Norwood: I will sustain the objection to the form of the question, and counsel may bring that out.

By Mr. MacIntyre:

Q. Is it your testimony now, then, Mr. Newman, that specific job contracts were discussed at meetings of the Rigid Steel Conduit Association?

A. If they were I did not hear them; no, sir.

Q. Can you explain why it is that the form of specific job contracts used by your company—which is in evidence

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here as Commission's Exhibit 687—is identical with
3763 that used by your competitors?

Mr. Bozeman: Just a minute now. I have compared those two contracts and I would certainly like for you to point out to me wherein they are identical.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Mr. Bozeman: I object to the question.

Trial Examiner Norwood: Will counsel state the ground of objecting to that?

Mr. Bozeman: On the ground that they are not identical.

Trial Examiner Norwood: Counsel makes an incorrect assumption; is that it?

Mr. Bozeman: That is correct.

Trial Examiner Norwood: What do you say to that?

Mr. MacIntyre: I say, Mr. Examiner, it is another instance where the record will have to speak for itself to show who is right. I maintain I am right.

Trial Examiner Norwood: Yes. I will sustain the objection.

By Mr. MacIntyre:

Q. Do you know of any particulars in which your specific job contract form differs from those used by your competitors?

3764 A. I don't recall ever seeing one of my competitor's specific building contracts, Mr. MacIntyre, so I cannot answer the question.

Q. You never made any effort to secure one, look at it?

A. No, sir.

Q. You do not know what they are doing in that respect, then?

A. No, sir.

Q. You have never found it necessary to find out what your competitors were doing in that respect in order to carry on your business?

A. No, sir.

3765 Q. Has it ever been your understanding, Mr. Newman, it was necessary for you to know what your competitors were doing about the use of specific job contract forms and consignment stock agreement forms in order to avoid violation of the Robinson-Patman Act?

A. No. I have never been advised it was necessary

for me to know what my competitors were doing regarding any of their actions.

Mr. MacIntyre: I ask that answer be stricken and that an answer be given to the question that is pending.

Trial Examiner Norwood: The motion is denied. Go ahead.

3766 By Mr. MacIntyre:

Q. What is your understanding on that point, Mr. Newman?

Mr. Stewart: I object to that, if Your Honor please, on the ground it is asking for a legal conclusion; the witness being a layman it is immaterial.

Trial Examiner Norwood: Overruled.

Answer the question.

Mr. Stewart: He is asking what is his understanding. The witness has said he never had any understanding, and now he is asking for the witness' opinion, obviously.

Trial Examiner Norwood: Overrule the objection.

The witness can explain.

The Witness: May I have the question read?

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Mr. Gilpatric: I object on the ground the question is not clear. It is ambiguous.

On what point?

Mr. MacIntyre: I will restate the question.

By Mr. MacIntyre:

Q. Is it your understanding, Mr. Newman, that it is necessary for you to know what forms of specific job contracts and consignment stock agreements are being
3767 used by your competitors and the terms contained in such agreements in order for you to avoid violation of the Robinson-Patman Act?

Mr. Poskanzer: I wish to object to that question, if Your Honor please, on the ground it has already been asked twice and been answered twice.

Trial Examiner Norwood: Objection overruled.

Let him answer.

Was that your understanding or not?

The Witness: I would like to have the question read again, please.

Trial Examiner Norwood: Read it, please, Mr. Reporter.

(The question was reread by the Reporter.)

Trial Examiner Norwood: You may answer.

The Witness: I don't recall.

Trial Examiner Norwood: Is that your understanding or is it not?

The Witness: If I understand the question correctly, it starts by saying "Is it your statement."

By Mr. MacIntyre:

Q. Is it your understanding, is what I said?

A. No, I don't think it is my—I don't know as I have to understand—I have to know anything about what my competitors are using in the way of forms.

3768 Q. In order to avoid violation of the law, is that right?

A. No. As a matter of fact, I am not a lawyer and sometimes may be violating the law without knowing it.

Q. You have never had the understanding you had to know what your competitors were doing in order to avoid violation of the Robinson-Patman Act?

A. That's right.

Q. Yesterday you told Mr. Bozeman that, to the best of your knowledge, no one in your organization ever discused the matters of specific building job contracts or entered into agreements respecting the same with any of your competitors.

Do you recall that testimony?

A. Not directly.

Q. Are you in a position now, Mr. Newman, to state whether or not that none of the representatives of the General Electric Supply Corporation ever discussed specific job contracts with competitors?

A. I cannot answer for anything that the General Electric Supply Corporation may or may not do, Mr. MacIntyre.

Q. Anything you have given on that point here in your direct testimony should not be taken as applying then to—

A. That's right.

Q. (Continuing.) —any of those people in that organization?

A. That's right.

Q. Do you recall your testimony on direct exam-
3769 ination to the effect that the General Electric Company's freight rate books and delivery charge booklets which are in evidence as Commission's Exhibit 72-A to Z-79, inclusive, were prepared by you—that is by the General Electric Company's traffic department along with price schedules?

A. By the sales department, that was my testimony. That the freight rate bulletin was prepared by the traffic department along with the delivery charge book with the sales department.

Q. What do you mean by that? Will you explain that answer?

A. Well, the freight rate bulletin is prepared by our traffic department, who are in touch with freight rates. The delivery charge bulletin, which is another bulletin, and I assume that is what you have reference to, is prepared by our sales department, based on the freight rates prepared by the traffic department.

Q. And why are those delivery charge booklets prepared?

A. They are prepared as a means for our agents to figure the delivered price in that territory.

Q. In that connection, they also use the freight rate bulletins such as are in evidence here as Commission's Exhibit 72-A to Z-79—that is, General Electric bulletin?

A. The general freight bulletin is an actual freight rate.

Q. And they use that in connection with the price cards in figuring prices?

3770 A. That's right.

Q. Do those people in the General Electric Company who prepared freight rate books have anything to do with preparation of the delivery charge booklets?

A. No, sir.

Q. Why is that function separated between two different departments?

A. Well, the freight rates are handled by the traffic department and the delivery charge bulletin is a function of the sales department.

Q. Can you specify for us here the sources of information, that is, types of books and specific references to them, so that we may go to them and look at them our-

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selves, which have been used by the traffic department in the preparation of its freight rate books and schedules?

The Witness: May I please have that question read?

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: You mean by that, where does the traffic department get the freight rate information?

By Mr. MacIntyre:

Q. I want the specific source which they used and about which you told us yesterday, cited to us by you so
3771 that we may know which they are and if duplicates of them are on file anywhere we can then check them?

A. I testified yesterday, in answer to the Examiner's question, that they got their information through—on the freight rate covered by the Interstate Commerce Commission. That was my testimony.

Q. What books do you know where so used?

A. That I— By the traffic deartment?

Q. Yes.

A. I cannot answer that excepting we have a large traffic department and naturally we have got to keep posted on current information regarding rates.

Q. Have you seen any of those books used by them in the preparation of these freight rate bulletins?

A. No, sir, I did not.

Q. Do you know whether or not they were red, white or yellow?

A. I wouldn't know.

Mr. Stewart: If Your Honor, please, I submit there is no reason why we should spend time going into this. The man does not know. He has said he does not know, and it is obvious they got their information from the Interstate Commerce Commission tariffs.

Trial Examiner Norwood: Does counsel make a motion?

Mr. Stewart: Yes, I do.

3772 I move that this line of examination cease.

Mr. Poskanzer: I want to object, Mr. Examiner, on the ground the witness has not been given enough choice of colors.

Trial Examiner Norwood: Objections overruled. Motion denied.

Proceed.

The Witness: Will you please read the question?

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: I couldn't tell you what they were, I have not seen them.

By Mr. MacIntyre:

Q. You do not know whose names appeared on them?

A. No, sir.

Mr. Stewart: I object on the ground this is not cross-examination and it is obvious the witness does not know and there is no reason why time should be consumed in this line of examination.

Trial Examiner Norwood: Overruled.

Mr. MacIntyre: May I have the last question and answer so I will know whether the reporter got it?

Trial Examiner Norwood: Read the last question
3773 and answer, please, Mr. Reporter.

(The question and answer referred to were read by the Reporter.)

Mr. Bozeman: Well, Mr. Examiner, regarding that last answer, I would like it to be noted this witness is not—I mean the assumption somebody's names were on the books—there is no proof here to that effect. It makes an erroneous assumption.

Trial Examiner Norwood: Proceed.

Objection overruled.

By Mr. MacIntyre:

Q. You do not know who prepared such books if their names are not on them or if you do not know whose names were on them; is that correct?

Mr. Welch: I object to that. It is entirely speculative.

Trial Examiner Norwood: I will remind counsel back there that this is cross-examination.

Mr. Poskanzer: I know it is cross-examination.

Trial Examiner Norwood: And I will ask that you interfere as little as you can, consistent with your duty to your clients.

3774 Proceed.

The Witness: I testified I did not see the books; therefore I cannot say what was on the books.

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By Mr. MacIntyre:

Q. How can you tell us, then, who prepared them if you did not see them?

Mr. Bozeman: Just a minute on that.

He has not testified who prepared the books. He was asked specifically regarding whether General Electric Company made use of a particular source, which was mentioned in various minutes of the meetings of the Association. And you can go at it more directly and ask about that.

Mr. MacIntyre: I don't want conclusions. I am after facts.

Mr. Bozeman: You can get them if you will ask for them.

Trial Examiner Norwood: Maybe that will help us a little. Answer the question.

The Witness: The question, please.

Trial Examiner Norwood: Read the question to the witness, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: See what, Mr. MacIntyre?

By Mr. MacIntyre:

3775 Q. These books which are used by your traffic department in the preparation of your freight rate bulletins?

A. Because I know that the sales department takes this matter up with the traffic department to get these rates and prepare the rates. Where the traffic department gets their rates I cannot answer that.

Q. How can you tell us, then, here that they did not see or use in that connection any freight rate compilations which had been made by Mr. Charles Donley?

A. I don't know that I testified to that effect.

Q. In other words, you now say any testimony you have given here should not be taken as indicating you had any knowledge as to whether or not your freight rate or traffic department of the General Electric Company used any information of the Charles Donley Company in preparation of the General Electric Company's freight rate books; is that correct?

A. It is possible that they might have had the Charles Donley freight book down there.

Q. You do not know, do you?

A. I do not.

Q. You testified in response to some questions Mr. Bozeman asked you yesterday about a meeting in the Biltmore Hotel in New York on January 6, 1937, and certain distributor-agents and representatives of certain manufacturers of conduit and of your attendance at that meeting.

3776 Do you recall the testimony?

A. Yes, I recall that I did not remember the date, but I remembered the meeting.

Q. Do you recall it was about January 6th or 7th, 1937; is that correct?

A. I wouldn't say definitely about the date; I recall the meeting, Mr. MacIntyre.

Q. Will you specify the names of as many of the so-called distributor-agents as you can who were in attendance at that meeting?

A. No, sir, I cannot say definitely who the distributor or the distributor-agents were. There were, I recall, about four or five of them at the most.

Q. Since you are unable to recall who they were, are you in a position to testify here whether or not they were there representing any particular organization?

Mr. Bozeman: Just a minute.

I asked the witness, Your Honor, as to what his understanding was in regard to that.

Mr. MacIntyre: I am trying to find out what was his basis of any understanding he had.

Mr. Bozeman: And consequently I am objecting to those questions. Why not ask him that instead of falsely stating what you remember regarding it?

Trial Examiner Norwood: Read the question, 3777 please, Mr. Reporter.

(The question referred to was read by the reporter.)

Trial Examiner Norwood: Objection overruled.

Answer the question.

The Witness: I recall one of the distributor-agents stating the fact that he was presenting the cost—increase in cost. I cannot specify just who he represented.

By Mr. MacIntyre:

Q. And who was he?

A. I am not certain. I would not want to be quoted as

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being positive. I think it is possible that it might have been Mr. Latham, but I would not swear to it.

Q. What Mr. Latham are you talking about?

A. E. B. Latham and Company.

Q. Mr. L. E. Latham of the E. B. Latham and Company?

A. That's right.

I said I was not positive about it. That is going back several years and my recollection of who was in attendance is pretty hazy.

Q. What is your testimony now as to who prepared that cost schedule which was submitted to you at that meeting?

A. I don't know as I testified who prepared it. I said it was presented.

Q. You considered it was presented with sugges-
3778 tions rather than recommendations; is that correct?

No, sir.

I said it was simply presented for consideration by—on the part of the individual manufacturers.

Q. With the understanding it would be considered by the manufacturers?

A. There was no understanding, Mr. MacIntyre.

Q. Why did you consider that it was being presented unless it was for your consideration?

A. I said it was presented for my consideration, but I said there was no understanding.

Q. It was your understanding at the time that it was presented for your consideration; was that correct?

A. For the individual manufacturer's consideration; yes.

Q. It is your understanding that is why it was presented?

A. Yes, sir.

Q. You have testified about competitors' price cards being submitted to you by your distributor-agents?

A. And our sales organization.

Q. These distributor-agents that you spoke of in that connection would include the E. B. Latham and Company, would it?

A. Yes, sir.

Q. E. B. Latham and Company handles conduit on a consigned stock basis for other conduit manufacturers; is that correct?

3779 Mr. Austin: I object to the question, Your Honor. The witness has no knowledge as to whether or not E. B. Latham handles anything for anybody else. That has not been shown in the record.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Mr. Austin: How can he testify as to what the E. B. Latham does?

Trial Examiner Norwood: Let's see what he can testify rather than telling him he can.

Mr. MacIntyre: I would like to know how much the witness knows about it—the conduit market in New York and to what extent this experience that he relied on so much yesterday really refers.

Trial Examiner Norwood: Objection overruled.

Answer the question.

The Witness: I cannot answer definitely that Latham has any stock arrangement with any manufacturer. But it is possible he may buy conduit from some other manufacturer.

By Mr. MacIntyre:

Q. Do you know whether he does buy conduit or handles conduit manufactured by other conduit manufacturers?

A. I have an indication he has; yes, sir.

3780 Q. Do you know whether or not in that connection they receive price cards published by your competitors?

A. You are really asking me to testify to the receiving of the mail, and I cannot tell you definitely whether they receive them in the mail.

Trial Examiner Norwood: He is asking about one item here. Do you know about that one item?

The Witness: I do notk now definitely, no, sir.

By Mr. MacIntyre:

Q. What explanation can you give as to the manner, then, in which E. B. Latham and Company came into possession of the price cards of your competitors which it passed along to you?

Mr. Stewart: May I ask is that a statement by counsel of what the record shows or is it an assumption?

If it is an assumption, I object.

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Mr. MacIntyre: It is a statement based on the witness' testimony.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Do you know that to be a fact?

The Witness: When I mentioned E. B. Latham, I used it as a general term. We have at least eighty agents
3781 who are not owned by the General Electric Company.

That is what I meant when I referred to E. B. Latham Company because Mr. MacIntyre was using E. B. Latham, I believe, in a general way, too.

By Mr. MacIntyre:

Q. Will you answer the question?

A. The question, please.

Trial Examiner Norwood: Read the question, please, Mr. Reporter, to the witness.

The Witness: I would like to hear the question again.

(The question referred to was read by the Reporter.)

The Witness: It might have been—the price card might have been from E. B. Latham or any one of our agent jobbers.

By Mr. McIntyre:

Q. Do you know that in many instances the distributor-agents, so-called, of yours who have thus passed price cards on to you were also distributor-agents of competitors of yours; is that correct?

A. Not necessarily on conduit.

Q. Can you answer whether or not you know that they handled conduit of your competitors?

A. So far as I know, they did not handle conduit
3782 of other makes.

Trial Examiner Norwood: None of your competitors handle it?

The Witness: No, sir.

Trial Examiner Norwood: I mean none of your agents handle other conduit?

The Witness: That's right; but, if I might explain.

Trial Examiner Norwood: Yes.

The Witness: There are manufacturers of conduit who make other items which we also make who sell to some of our conduit agents these other items and are on their mail-

ing list to receive all of their literature. And that is how we sometimes get the price cards of other manufacturers from our own agents.

Trial Examiner Norwood: Your consignment agency contracts are exclusive; are they?

The Witness: No.

Trial Examiner Norwood: They are exclusive agents?

The Witness: Not that I know of.

By Mr. MacIntyre:

Q. Is it your testimony now, Mr. Newman, that you do not know whether or not that any one of your so-called distributor-agents other than the General Electric Supply Corporation do or do not handle conduit manufactured by your competitors?

A. There may be cases where they do, Mr. MacIntyre.

3783 Q. What do you know about it?

A. I know of one case where they bought some conduit from another manufacturer.

Q. Who was it?

A. The manufacturer or the general agent?

Q. The manufacturer and the agent.

A. The agent was Metropolitan Electric in Chicago and the manufacturer was Clayton Wire Company.

Q. Did that so-called distributor-agent continue as your agent in handling your product, that is, conduit, subsequent to that?

A. Yes, sir. He only bought one lot, as I remember, and I think that was because we could not make delivery.

Q. And that is the only instance about which you know where your so-called distributor-agents have at any time handled the conduit manufactured by your competitors?

Mr. Swope: I object to that, if Your Honor please.

He testified on occasion he thought there may be cases where they do, and I believe again he testified the Supply Corporation did it.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Well, now, the witness

3784 would probably be able to answer now.

Objection overruled.

Mr. Swope: He has already answered.

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Trial Examiner Norwood: What is the answer?

The Witness: I know of another occasion recent—

By Mr. MacIntyre:

Q. Name that.

A. G. E. Supply Corporation, Allentown.

Q. Are those the only two instances of which you have knowledge where your so-called distributor-agents have handled conduit manufactured by your competitors?

A. Those are the only instances that I can recall at this moment.

Q. In other words, you have no recollection of any other instances about which you can tell us?

A. There might have been some, but I cannot recall them at this moment.

Q. Is it your testimony that it is not the practice of some of your so-called distributor-agents to handle regularly conduit manufactured by the General Electric Company and one or more of your competitors?

A. That is covering a lot of ground. There are two hundred agents.

But I will say in answer to that question generally they do not handle any other make.

3785 Mr. MacIntyre: Will you please read the question?

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the reporter.)

Trial Examiner Norwood: He has asked you with respect to some of your agents. Now you testify so as to exclude any of your agents from that arrangement of regularly handling your product and the products of one of your competitors. That is the conduit product.

Mr. Bozeman: If Your Honor please,—

Trial Examiner Norwood: Let him answer that.

The Witness: I would like to have it read.

Trial Examiner Norwood: Read the question and the answer.

(The question and answer referred to were read by the Reporter.)

The Witness: That's right. It is not.

Trial Examiner Norwood: That is, you know that some of your competitors do resort to that practice?

The Witness: There have been—you mean where they—

Trial Examiner Norwood: Habitually carry your conduit and somebody's else's.

The Witness: As far as I know, Mr. Examiner, our agents do not carry in their warehouse any conduit
3786 but General Electric Company's.

Trial Examiner Norwood: That applies to all your agents?

The Witness: That's right.

Trial Examiner Norwood: As far as you know?

The Witness: That's right.

By Mr. MacIntyre:

Q. You have not made a survey of the markets sufficiently to tell us at this time whether or not they do, have you, Mr. Newman? You just limit your answer by saying as far as you know?

A. I would know, Mr. MacIntyre, whether any of our agents handled any other make of conduit because our salesmen and district managers would report that to me immediately.

Q. It is your testimony, Mr. Newman, that you are positive and you know as a fact they do not regularly handle conduit of any other manufacturer as a regular thing; is that correct?

Mr. Stewart: I object. If Your Honor please, the witness has stated specifically the basis of his knowledge and the reason for the answer. I think it is unfair to put that question in that manner: "Will you state positively as a fact." That is arguing with him.

Mr. MacIntyre: I am asking if he is doing that.

Trial Examiner Norwood: I think he has explained.
3787 Mr. Stewart: He has explained it very fully.

Trial Examiner Norwood: Yes.

Objection sustained.

I do not think the question is unfair, but I think the point has been covered.

By Mr. MacIntyre:

Q. Is it your testimony that the E. B. Latham and Company does not handle regularly conduit manufactured by manufacturers other than the General Electric Company?

A. Do you mind repeating that?

Q. I am asking that as a fact, not as to whether you just recall it.

Mr. MacIntyre: Will you read the question, please?

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Trial Examiner Norwood: Read the question, please Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: It has been reported to me in several cases by our salesmen that Latham have handled and purchased other conduit from other manufacturers.

By Mr. McIntyre:

Q. Regularly?

A. Not regularly. On occasion I get those reports from our salesmen.

3788 Q. Are you in a position to testify whether they handled more conduit manufactured by your company than manufactured by your competitors?

A. I don't know what they buy from our competitors, Mr. MacIntyre. Therefore I cannot say whether they handle for G. E. or more somebody else's.

Q. You do not know on what basis they do handle the conduit of your competitors?

A. I can testify to this: that our sales of conduit to E. B. Latham annually runs into a considerable volume of business.

Q. But you do not know on what basis they purchased the conduit from your competitors?

A. No, sir, I do not.

Q. And it would not make any difference as to what basis they purchased it from your competitors, as to whether or not you continued with them your so-called distributor-agent arrangement; is that correct?

A. As long as they sell conduit at the prices which we dictate and we get our rate, we want representation in New York and E. B. Latham is good representation as far as we are concerned.

Q. In other words, you are willing to continue them as your so-called distributor-agents even though they were also so-called distributor-agents of your competitors; is that correct?

3789 Mr. Bozeman: I object to the question, if Your Honor please, on the ground of the repeated use of the term "so-called".

That is a question which others can determine as to whether those agency contracts are real agency contracts or whether they are so-called agency agreements. I think it is unfair to put that into the questions here.

Trial Examiner Norwood: I think the term is in accordance with counsel's contentions, the same as your use of terms in accordance with your contentions. He may do that.

Mr. MacIntyre: Please read the question to the witness.

Trial Examiner Norwood: It is a device adopted for just that very purpose; to give him an idea without making a concession.

Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Mr. Swope: I object to that, if Your Honor please.

Trial Examiner Norwood: Objection overruled.

Mr. Swope: You have not heard my ground, sir.

Trial Examiner Norwood: I do not—

Mr. Swope: Can I state my ground, sir?

3790 Trial Examiner Norwood: Yes.

Mr. Swope: That it assumes a question contrary to testimony which he gave a few minutes ago. That is, he knew the basis on which Latham bought the conduit. The question assumes he bought it on an agency basis.

Trial Examiner Norwood: I do not think counsel's grounds are in order here, to advise the witness what he has just sworn there. If he is quoting this as of the record at some other time and it is not correct, why I think the record will show.

Anyway, the objection is overruled.

I will ask the witness to answer the question.

The Witness: We would continue our agency agreement with E. B. Latham and Company, unless we found that they had an agency agreement with somebody else and then we may consider the matter and possibly take some action.

By Mr. MacIntyre:

Q. Is is your practice to discontinue your so-called agency agreements with any one of the jobbers who handled conduit when you find out they are handling conduit manufactured by your competitors?

A. We have not done so so far, Mr. MacIntyre.

Q. What is your recollection about this so-called Committee on Conditions of the Rigid Steel Conduit Association?

A. Why the only recollection I have of it, the 3791 Committee never met and I never discussed with any

individual member of the Committee or the group as a whole just what the purpose of that committee was.

Q. Is it your testimony you did not meet with the committee or whether the committee other than you did not meet?

A. It is my testimony and still is that I did not meet with the committee and as far as I know the committee did not meet.

Q. Is it your testimony the committee did not meet?

A. I said that.

Q. You are positive that it did not meet?

A. So far as I know, I said they did not meet.

Q. How do you know whether or not it met without you?

Mr. Stewart: I object to that, Your Honor. That is the same question I objected to before. The witness said "So far as I know, they did not meet."

What more can the man testify to? It is argumentative.

Trial Examiner Norwood: No, there is a difference between excluding something and failing to include something.

Mr. Stewart: The witness said, "So far as I know, they did not meet." That is all he knows about it.

Trial Examiner Norwood: Yes, sir.

3792 Mr. Stewart: Mr. MacIntyre is trying to get him to say he is positive they did not meet when he has told him already as far as he knows they did not.

Trial Examiner Norwood: That is not what he is trying to do.

Mr. Stewart: If you will read the question you will find that is exactly what he is trying to do.

Trial Examiner Norwood: In the first place, the testimony goes in there in a vague way. He doesn't know something. So far as he knows, the thing does not happen. Then the other side has to—wants to find out whether or not there is any positive knowledge as to whether this happened or did not happen. He has a right to do it, and that is what the question is directed to.

Mr. Stewart: I do not so understand it, Your Honor.

Trial Examiner Norwood: Well, I understand it.

Objection overruled.

Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: I do not know whether or not they met without me, but I know this: I never got a notice of any meeting.

By. Mr. MacIntyre:

3793 Q. But you do not know whether the committee met without you?

A. I do not know.

3794 Q. During your attendance at meetings of the National Electrical Wholesalers Association, you saw representatives of manufacturers of conduit other than those representing the General Electric Company; did you?

A. Manufacturers' representatives, did I understand?

Q. Yes.

A. Yes, we met them in the lobby.

Q. You saw them during the course of these Association meetings?

A. I met them in the lobby of the hotel where the meetings were held.

Q. That was a regular occurrence, to see them when you were in attendance at such meetings?

A. As a rule, nearly all of the manufacturers' representatives were at those meetings. You were bound to see them some place.

Q. You told Mr. Bozeman in reference to the meeting of the Rigid Steel Conduit Association of June 14, 1938, that there was no discussion relative to deviations from card 76.

Is it your testimony you do not recall that there were any discussions or is it your testimony that there were no such discussions by anyone during the entire course of that meeting?

A. It is my testimony, Mr. MacIntyre, that I heard
3795 no discussion of any price at that meeting or any other meeting.

Trial Examiner Norwood: Did you mean to state there were no such discussions had by others?

The Witness: Not within my hearing.

Trial Examiner Norwood: Yes.

By Mr. MacIntyre:

Q. In other words, the only thing your testimony is to be taken here as indicating is that you did not hear the discussion referring to card 76; is that correct?

Mr. Bozeman: Your Honor, that is an erroneous statement of—

Trial Examiner Norwood: Overruled. That is a question he has a right to ask.

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Mr. Poskanzer: I object, if Your Honor please, on the ground it assumes a discussion took place. There is nothing in the record to show that a discussion took place.

Trial Examiner Norwood: Overruled.

Answer the question.

The Witness: The question, please.

Trial Examiner Norwood: Will you read the question, please, Mr. Reporter?

(The question referred to was read by the reporter.)

The Witness: I did not hear any discussion, Mr. MacIntyre.

3796 By Mr. MacIntyre:

Q. That is all you want your testimony to be taken to indicate, is that you did not hear it?

A. I can only talk for myself, and that is what I did hear and didn't hear.

Q. You are not attempting to testify such discussions did not take place; is that right?

Mr. Bozeman: I object to that.

Trial Examiner Norwood: Objection overruled.

Let the cross-examination proceed.

Mr. Bozeman: I have a right to press objections to these questions.

Trial Examiner Norwood: That's right.

Mr. Bozeman: When they have been repeated half a dozen times.

Trial Examiner Norwood: I heard you.

Proceed.

The Witness: My testimony, Mr. MacIntyre, is at that meeting there was no discussion of price that I heard.

By Mr. MacIntyre:

Q. Are you also attempting to testify that beyond your hearing there was no discussion concerning prices?

Mr. Poskanzer: I object to that. If Your Honor please, the witness is not qualified to testify what happened

3797 outside of his hearing. It would be pure hearsay.

Trial Examiner Norwood: Your objection is overruled.

Answer the question.

The Witness: I cannot testify on what happened outside of my hearing.

Trial Examiner Norwood: That is the answer.

Mr. Bozeman: Wasn't it rather obvious all along?

Trial Examiner Norwood: Well now, when this testimony goes in and leaves the matter rather vague, the cross-examination is for the purpose of clarifying, and that is what the counsel is trying to do.

Mr. Bozeman: Your Honor, do you mean to say you need testimony to the effect that a witness who says he did not hear some thing is not testifying as to what happened beyond his hearing? I don't think anybody would need testimony on that.

Trial Examiner Norwood: I think counsel on the other side has a right to make that perfectly clear.

Mr. MacIntyre: I objected through direct examination to the effect that the witness was testifying so far as he knew there were no discussions concerning these prices and so on, as to what had taken place at these meetings. And I objected continuously that there was no foundation laid to show he had any knowledge as to whether or not
3798 these other people had so discussed the prices.

Trial Examiner Norwood: If we are to be troubled over this clarifying process, I shall have to require better grounds for such testimony going in on direct examination hereafter. But I thought we could do this and save time.

Mr. Bozeman: If Your Honor please, may I state—I am sorry to take up the time.

Trial Examiner Norwood: Yes.

Mr. Bozeman: But I want to state the reason why those questions were framed that way.

In framing questions I tried to bear in mind the form your Honor had approved in other witness' examinations. Frequently you would tell the witness to answer the question according "to your knowledge". You limited it "to your knowledge." And I did that in framing my question. And apparently it is being used now to impede and harass the witness here.

Trial Examiner Norwood: Yes, and sometimes the witness does not heed what the Examiner said about that.

Mr. Bozeman: I could have left it out of my questions, for that matter.

Trial Examiner Norwood: Yes, but I struck the one here not long ago where the witness absolutely disregarded what I said about that. Go ahead.

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By Mr. MacIntyre:

3799 Q. The answers you have just given us concerning what took place at the meeting of June 14, 1938, apply with equal force to what took place and your knowledge as to what took place at the meetings of May 4, 1939, and October 12, 1937; is that correct?

A. That would be true; yes, sir.

Q. And of November 16, 1939; is that correct?

Mr. Stewart: I am going to raise the objection, Mr. Examiner, and ask Mr. MacIntyre what he is referring to. He says, "Your answer covers all." I don't know what he is talking about.

Trial Examiner Norwood: Give the witness a chance to understand or say that he doesn't understand.

Mr. Stewart: I know, but I think counsel is entitled to understand so that we may know whether to object.

Trial Examiner Norwood: Counsel may move up closer here.

Mr. Stewart: No. I heard the question.

I ask that the question be read to Your Honor.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the reporter.)

Mr. Stewart: Now what he is trying to—

Trial Examiner Norwood: That is, in case some-
3800 thing was said you did not know, you did not mean to say you had knowledge it did not happen; is that right?

The Witness: That's right. Only what I heard and what I didn't hear.

By Mr. MacIntyre:

Q. And that same answer applies also to what took place at the meeting of November 16, 1939; is that correct?

A. What was that meeting of November 16, 1939, Mr. MacIntyre?

Q. It is one of these meetings about which Mr. Bozeman asked you on direct, concerning discussions of prices.

Trial Examiner Norwood: Can you answer the question or not?

The Witness: I asked Mr. MacIntyre, sir, a question as to what was that meeting of October 29, I think you said.

By Mr. MacIntyre:

Q. November 16, 1939.

Mr. Bozeman asked you about that meeting on direct examination and asked you whether or not you recalled any discussion concerning prices and you said no.

Mr. Bozeman: Is that November 13?

Mr. MacIntyre: November 16, 1939.

By Mr. MacIntyre:

Q. I am asking whether or not it is your testimony here that no discussion concerning prices took place
3801 at that meeting between any one—that is any two or more representatives of manufacturers?

A. My testimony is I did not hear any discussion at that meeting.

Q. And that is the only thing you intended to convey in your answers to Mr. Bozeman; is that correct?

A. That's right.

Trial Examiner Norwood: We will recess until one-thirty.

(Whereupon, at 12:30 p. m., a recess was taken until 1:30 p. m.)

3802 Afternoon Session.

1:30 p. m.

A. E. NEWMAN resumed the stand and testified further as follows:

Cross-Examination by Mr. MacIntyre (Continued).

Q. Mr. Newman, is it your testimony that in your statements on direct examination that no agreements had been entered into so far as you knew concerning prices, the use of price cards, methods of figuring prices, adherence to price cards, preparation, use and adoption of agency agreements, specific job contracts, meant no more than your knowledge was limited to those things which came directly to your attention.

Trial Examiner Norwood: I think that he answered a question of mine that applied to all this testimony, that would fit all of those matters.

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Mr. MacIntyre: I do not believe that a question to this effect has been asked, or that we have any answer to a question that has this import.

Trial Examiner Norwood: Let him answer it.

The Witness: May I please have the question there?

(The question referred to was read by the Reporter.)

3803 The Witness: I can only testify, Mr. MacIntyre, to what I know, and in answer to your question there is no agreement on anything stipulated in this question.

By Mr. MacIntyre:

Q. You say that there was no agreement on any of those things I am asking you now, what is the limit of your knowledge as to whether or not there was any agreement or discussion concerning those things? Does it extend anything beyond what was brought specifically to your attention?

A. I think I have already answered that, that as far as my knowledge is concerned, it only would refer to those things that I know when I was at a meeting, that actually happened.

Q. Of course, we know that your knowledge is only those things that you know, but I am really trying to find out to what you extend that knowledge, or attempt to extend it, as to anything other than those things which were brought specifically to your attention.

Mr. Bozeman: Your Honor, I object to the question on the ground that it has been adequately answered.

Trial Examiner Norwood: Objection sustained.

Off the record.

3804 By Mr. MacIntyre:

Q. Mr. Newman, have you attempted to include as falling within your knowledge those matters which were discussed and reported to you by representatives of your company?

A. On what occasions have you reference to, Mr. MacIntyre?

Q. I am talking about any occasion or instance about which you have testified to here.

A. Are you referring to the meetings, or are you referring to the information given to me by our representatives from the field? Your question is not clear to me.

Q. Can you not answer the question as put to you?

A. I said your question was not clear, Mr. MacIntyre.

Q. Have you attempted to include in your testimony as falling within your knowledge here matters which took place at meetings and which were reported to you by others who were in attendance at meetings?

A. Referring to General Electric Company?

Q. Any one who was in attendance at meetings.

A. The only ones who have reported to me, Mr. MacIntyre, regarding any information or discussions at meetings were those who represented the General Electric Company, and I am answering for them.

Q. You are not answering then as to any reports made by anyone else in attendance at those meetings?

A. I don't recall that anyone else ever reported
3805 anything to me. I haven't said so.

Q. You have not attempted to include in your testimony here any matters which were reported by anyone in attendance at these meetings?

A. I just said, Mr. MacIntyre, that no one ever reported to me anything that took place in any meetings outside of those who represented the General Electric Company at such meetings where I wasn't present.

Q. Have you attempted to include in your statements any information as being within your knowledge which was reported to you by representatives of the General Electric Company from the field.

The Witness: May I have the question again?

Trial Examiner Norwood: Yes. Read the question, Mr. Reporter, please.

(The question referred to was read by the Reporter.)

The Witness: That is right.

By Mr. MacIntyre:

Q. In other words, you have taken that to be as a part of your knowledge?

A. That is right.

Q. Although you did not have first hand knowledge of those matters; is that correct?

A. That is right.

3806 Q. And it is in part upon such information that you have relied in giving your answers to Mr. Bozeman's questions on direct examination; is that correct?

A. In part, yes, sir. I have confidence in the men we employ, and if I didn't have confidence in those men we wouldn't employ them.

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Q. The salesmen of the General Electric Company and the General Electric Supply Company, who are scattered throughout the United States, are still in a position to report—that is to investigate and report—the status of specific job contracts and performance of those contracts, are they?

A. We have never used the salesmen of the General Electric Supply Company, Mr. MacIntyre, to investigate contracts.

Q. What about the General Electric salesmen?

A. We have used the General Electric salesmen to investigate our contracts.

Q. And they are still in a position to do so, are they not?

A. Yes, sir; they are.

Q. Do you recall your testimony this morning to the effect that there are fluctuations in demand for conduit from time to time?

A. Fluctuations in demand based on building, yes, sir.

Q. In other words, there is a greater total demand on certain occasions for conduit than there is at other

3807 times?

A. That is right, based on buildings.

Q. And you also testified to the fluctuations in demand in one section as distinguished from fluctuations in demand for conduit in any other section of the country, do you recall that?

A. That is right.

Q. Did you mean by that, for example, that there would be a large building program being conducted, say in Philadelphia, which required considerable use of conduit, and thereby increased the demand for conduit in the Philadelphia district, without having a comparable need for and demand for conduit in any other section of the country at the same time. Is that what you mean?

A. That is what I mean, excepting this, Mr. MacIntyre, that that demand or increased demand might prevail at the same time in several areas in the country, where in other parts of the country that demand might be off.

Q. When you state that the demand for conduit in various sections of the country does not fluctuate in the same ratio, you mean that there would be probably an increasing demand in some sections and a decreasing demand in other sections, is that right?

A. That is right, based on building activities in that section.

3808 Q. You know from experience that on occasions in the last four or five years there have been increasing demands for conduit in particular sections east of Pittsburgh, and at the same time decreasing demands in other sections east of Pittsburgh, is that correct?

A. I wouldn't want to confine my remarks to east and west of Pittsburgh.

Q. Let us take that particular section of the country and see if you cannot answer the question.

A. There may be some areas east of Pittsburgh where the demand is greater than in other parts east of Pittsburgh, and there may be some areas west of Pittsburgh where the demand is greater than in the other areas west of Pittsburgh.

Q. Don't you know as a fact, Mr. Newman, that within the past six years the demand for conduit in Washington, D. C., has fluctuated upward while at the same time the demand for conduit was fluctuating downward in Philadelphia?

A. Using those two as an illustration there has been an increased demand for conduit in Washington as compared with Philadelphia, that is right.

Q. Within the past six years?

A. Yes, sir.

Q. And during the same period of time?

A. Practically, yes.

Q. Do you recall testimony of yours on direct

3809 examination to the effect that overhead costs of the General Electric Company in the production of conduit was a great percentage of the total cost?

A. Yes, sir.

Q. And what part of the total cost would you say is the overhead cost?

A. I would say somewhere about—if you are talking about various expenses—according to the term you use as overhead—it might run about 15 to 17 per cent.

Q. And what have you included within that definition —I mean within the term "overhead cost" as you have used it in connection with your testimony here?

A. That includes a number of miscellaneous items.

Q. Will you please name them?

A. I cannot enumerate each one of them; one of them

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might be taxes, and things of that kind. I would have to refer to our cost records in order to give you a complete record of it, and those records are available, if you are interested.

Q. Have you included such things as capital cost?

A. Do you mean capital investment?

Q. As a part of your overhead—yes.

A. I would have to refer to our cost records, Mr. MacIntyre, to give you a breakdown.

Q. Could you not tell us what you had in mind when you answered Mr. Bozeman on direct examination
3810 this morning, to the effect that overhead costs constituted a large part of the total cost of the General Electric Company in its production of conduit.

A. I had in mind that percentage which I just mentioned, which ran somewhere, I believe, from 15 to 17 per cent., and I did not analyze or review the breakdown of that percentage.

Q. And you do not even know what was included as elements within that term?

A. No, excepting that information is available in our records in Bridgeport, if you are interested.

Q. You cannot tell us what is included there?

A. Not definitely, but it is there.

Q. You cannot tell us whether capital costs are included?

A. I would have to refer to and review our records, Mr. MacIntyre.

Q. Or whether administrative and sales expenses are included?

A. They are not in it, that I do know.

Q. What are they, if they are not overhead costs, as you use the term here?

A. When I was talking about costs I was talking about manufacturing costs, our sales and administrative expense is a separate item, and that is not included.

Q. You have not included anything outside of
3811 factory costs in connection with your statement that overhead costs were 17 per cent. of the total?

A. That is right.

Q. Have you excluded from overhead costs the management of the factory?

A. No, that probably would be included in our cost.

Q. Overhead cost?

A. Yes, sir.

Q. What about obsolescence?

A. I cannot give you the details of each one of these items, Mr. MacIntyre. I can still repeat what I said before, if you are interested in a breakdown of how we arrived at those costs, I will be glad to get them for you.

Q. When did you learn what percentage of the total cost the overhead constituted?

A. I have always known that, but I have never gone to the trouble of determining whether it has an item of capital investment or management, or what. I am always interested in what the cost of raw materials is, what labor costs are, and what other items of expense are percentage wise.

Q. In what form did you ever see it stated so that you would ascertain, or could ascertain, what part of the total cost overhead constituted?

A. Those records are available to me at all times. I can get that right over the telephone.

3812 Q. In what form were they stated to you when you did get them?

A. So much for raw materials, so much for labor, and so much for other expenses.

Q. Without stating to you what the other expenses were?

A. Yes.

Q. Who stated that to you?

A. Our cost department.

Q. And that is the only information that you have used as a basis for the estimate as to what portion of the total cost overhead costs are, is that right?

A. Yes, sir. That is right, and I don't know of any other better way to get it.

Mr. MacIntyre: In the light of the testimony, I move that the testimony of the witness this morning be stricken from the record, that the overhead cost as an element in the production of conduit is a large part of the total. The witness says he has no direct knowledge, he is taking hearsay by somebody else.

Mr. Bozeman: Your Honor, his testimony shows that the information was given to him by persons who were in charge of the keeping of the books, the tabulation and collection of those items, and it is part of his duty, I assume, to obtain that information from that source.

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Trial Examiner Norwood: I will take the ruling
3813 under advisement until such time as I can study the record.

Mr. MacIntyre: I ask your Honor to also note that in connection with my motion, the witness is unable to state what was included in the statements made concerning what proportion of the total cost the overhead was. In other words, he does not know whether they reported to him a half dozen items or a dozen items as falling within that.

Trial Examiner Norwood: All right, go ahead.

Off the record.

(There was a short discussion off the record.)

Trial Examiner Norwood: On the record. Proceed.

By Mr. MacIntyre:

Q. Do you recall your testimony this morning, Mr. Newman, to the effect that you could not get more for your conduit than your competitors got?

A. Yes, sir.

Q. In other words, it was deemed to be of the same quality, is that correct?

A. That is right.

Q. In these instances where your salesmen have approached buyers and quoted your buyers' prices which are no different from the prices quoted by your competitors, in those particular instances where you and your competitors quoted on the cards, and in the same instances where delivery and other such services which could
3814 be performed by the General Electric Company in no different way, and no better than your competitors—at least one of your competitors—performing service, what competitive elements did you rely upon, or have you relied upon, to secure the business over and above your competitors in such instances?

A. Where everything else was equal?

Q. No, in this instance where the price is equal and the quality, as you say, is equal, and service, by the very nature of things, was equal.

A. Yes, sir.

Q. Now, what did you rely upon in those instances to outbid your competitors?

A. The only thing we could rely upon was the hope that the purchaser would favor us with the order, everything else being equal.

Q. And upon what did you base such hope?

A. Only as a hope.

Q. Is the hope a possibility that your salesmen had made a better impression upon the buyer than the competitor had been able to make, is that correct?

A. If they were able to do so, yes.

Q. You told Mr. Bozeman yesterday afternoon that you placed numbers on your price cards in the same way that your competitors placed numbers on their price cards, so that they could be more easily identified by your so-
3815 called distributor agent, do you recall that testimony?

A. Yes, sir.

Q. Is it your testimony that unless numbers are placed upon your cards that your distributor agents are in no position to identify one of your cards from another?

A. Well, I wouldn't say that, but if one of our agents calls up to give me some information it is, I believe, more convenient for him to say "price quoted by X Company was a price off of a certain card," and as I testified yesterday we simply continued the practice which we had in effect before I took this position.

Q. You then feel it would be more confusing to him and to you if he merely stated that "I am now talking about the price you quoted to me on March 10th, 1941," instead of telling you "I am now talking about the price that you quoted to me on card 84"?

A. Did you use the term more confusing?

Q. Yes.

A. I think it would be more convenient if he used a number rather than a date.

Q. You think it would be more confusing to him to use the date instead of the number; is that correct?

A. I wouldn't say so, no, sir. I think it would be more convenient though to use the number.

Q. And it is also more convenient for him in the
3816 use of the numbers to inform you as to what competitors' price he is talking about, is it not?

A. I would like to say this, if I may, that the cards which we use, Mr. MacIntyre, are not only for the use of our agents, but our agents in turn distribute those cards to their prospective purchasers, and they use that card as a guide to what the price of General Electric Company conduit is, and our agent's customers at times in reporting to our agents what has been quoted, they use, from my own

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experience, numbers rather than the dates, and therefore it is my experience in the last eight years that the number on our card is more convenient, not only to our agents, but also to the consumer.

Q. Did you ever hear of a child playing with candy before you gave it to him?

A. You are going back a litle further than my experience, Mr. MacIntyre.

Q. Do you think it is because you have given it to these people that they use it in the way that they do, or for some other reason?

A. No, I think, if you want a frank answer, they like it.

Q. They like it because you gave it to them, is that correct?

A. No, sir; they like it because it is convenient.

Q. Do you think that anyone would be willing to
3817 sacrifice a little convenience for an increased profit at times?

Mr. Swope: Is that related to the past questions? I do not understand the question.

The Witness: I think I understand the question. If you do not mind, your Honor, I would like to have it read.

Trial Examiner Norwood: Yes, read the question.

(The question referred to was read by the Reporter.)

The Witness: The only answer I can give you to that, Mr. MacIntyre, it would be foolish for them if they didn't if they were interested in profits.

By Mr. MacIntyre:

Q. These people who have told you that they desire the delivered prices are engaged in the purchase of conduit for resale and in the buying of conduit for use in buildings which they were constructing for others, and for which they charged prices; is that correct?

The Witness: I do not think I understand your question, Mr. MacIntyre; will you read it, please?

(Question read by the Reporter.)

The Witness: Do you mean by that, the contractor who asked for a delivered price charged for the contract?

By Mr. MacIntyre:

Q. Charged for the building in which he used the contract.

3818 A. My understanding, if I may say so, is that the electrical contractor who buys the conduit which

is installed in the building is only interested in the electrical end of it, and not in the total building.

Q. Oh, yes, but he is interested in getting out of his work something for his work plus the price that he paid you for the conduit; is that correct?

3819 A. I can't answer that. Do you mean for his labor?

Q. Yes.

A. Oh, certainly.

Q. The people who ultimately had to pay him for the work that he did and the time that was involved in the work that he did, never told you that they desired delivered prices, did they?

A. You are talking about the building owner?

Q. Yes.

A. No, sir, I have never discussed the matter with building owners.

Q. Can you cite us any instance where you did, or any one of your competitors who manufactured rigid steel conduit has ever published a price card which provided for f.o.b. mill prices, other than through the use of the basing point system shown on the price cards in evidence here?

A. I can't understand, Mr. MacIntyre, for all manufacturers of conduit. I can only answer for the General Electric Company.

Q. Has the General Electric Company ever published one of its price cards to its trade wherein it classified f.o.b. mill prices at New Kensington, Pennsylvania?

A. (No answer.)

Q. You told Mr. Bozeman this morning that you do not know why the General Electric Company started its

3820 use of the basing point system in its quotation of prices on rigid steel conduit; you told him why you did know it was being continued under your supervision, and that was for the purpose of meeting competitive conditions. Do you recall that testimony?

A. Meeting the conditions established by other manufacturers. I think that was my wording.

Q. What do you mean by that statement, meeting the conditions established by other manufacturers?

A. What I meant by that, is that our salesmen, as I have already testified, and our agents, had sent us price cards of some of our—some other manufacturers of rigid conduit, and we follow the policy set out in their price card of quoting on that basis.

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Q. You merely used them, or continue its use in the General Electric Company, because your competitors use it, is that correct?

A. Because other conduit manufacturers use it, yes, sir.

Q. And you cannot state any other reason as to why it is used?

A. Excepting this, and I think it is a convenient way for the consumer to buy; that is my opinion.

Q. From your experience do you know of any other reason why you use it, other than the one that you just stated to me?

A. Do you mean the one of being convenient to
3821 the consumer?

Q. No, the one of being the same that your competitors use.

A. I think that both these answers would apply, Mr. MacIntyre.

Q. Referring to that term "consumer" which you have used in one of your last answers, to whom do you refer when you say consumer?

A. To the purchaser of the conduit from our agents. It may be a contractor, an industrial plant, or anyone who uses conduit.

Q. Or the retailer for resale, any of those?

A. I don't know that that is ever done.

Q. By and large practically all of your sales are made to contractors?

A. What?

Q. Electrical contractors?

A. No, I wouldn't say that. They are also made to industrial plants.

Q. What percentage of your sales are made to electrical contractors?

A. I can't answer that question, Mr. MacIntyre.

Q. You do not know?

A. No.

Q. Is it your statement that it is easier for a
3822 buyer of conduit to take your price cards, which specify a basing point price, Pittsburgh, Pennsylvania, and to take your freight rate bulletin, and delivery charge booklets, and to compute from those three elements and factors a delivered price, than it would be for him to determine what it would cost him at, say, Washington,

D. C., if you quoted him a price delivered from a stock of yours in Washington, D. C., f.o.b. Washington?

A. What is the difference, Mr. MacIntyre?

Q. I think the question outlines the difference.

A. I don't think there is any difference in the question.

Q. In other words, you do not see any difference in a quotation of say $5.50 per hundred f.o.b. Washington, D. C., from a quotation of $4.65 per hundred basing point price, Pittsburgh, plus the freight which has to be computed and added to that after being converted in terms of cents per hundred feet?

A. I don't think there is any difference.

Q. You do not see any difference to the buyers?

A. No, sir, I do not.

Trial Examiner Norwood: The buyers pay the same amount?

The Witness: I think that is what it will finally wind up to.

By Mr. MacIntyre:

3823 Q. I am not talking about whether it will wind up in the same amount, Mr. Newman, I am talking about whether it means any difference to the buyer when he looks at a price, as to whether it is easier for him to tell what the cost is to him in Washington, D. C.

A. That is what he is getting anyway, Mr. MacIntyre. If I understood your question right, you asked me what would be the delivered price, the difference in the Pittsburgh base, plus the freight converted into the delivered charges at Washington. Isn't that the delivered price, isn't that possibly $5.50?

Q. I think you have misunderstood me.

A. Maybe I did, Mr. MacIntyre.

Q. I am asking you if it would be as simple for a buyer in Washington, D. C., to determine what price he has to pay you if you quoted him a price f.o.b. Washington, D. C., instead of quoting him a price basing point, Pittsburgh, Pennsylvania, and telling him how he shall arrive at a delivered price in Washington.

A. Mr. MacIntyre, when a contractor or an industrial plant contracts for a price in Washington, D. C., if that is where his plant is located, or if that is where they want the material delivered, our agents quote the delivered price in Washington.

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Q. But they figure it out for all of these customers
3824 when they find they are unable to figure out a base price.

A. Our agents quote the delivered price in the area where they are located or the area in which the material is to be delivered.

Q. Do you think it is easier for your so-called distributor agents, such as the E. B. Latham & Company, in New York, to restate to their inquirers what the delivered price is in New York, through your present method, than it would be if you told Latham & Company that it was $5.25 per hundred feet, instead of asking them to figure it out, as you do?

A. Well, the agents have got a function to perform, and a service to perform, and I think it is part of their service, Mr. MacIntyre.

Q. I do not think that answers the question.

A. To give the consumer the price laid down in that territory, wherever it may me.

Q. It is easier for them to compute it than for you to compute it?

A. We would have to compute it, I think, for every city and every hamlet in the United States.

Q. And that is what you do not want to do, is that correct?

A. I didn't say we didn't want to do it, but I think it would cause a lot of work and a lot of additional expense in this way; under our system, the way we have it established, we divide that work up between 200 agents.

3825 Q. You feel that it is easier for you to have your agents to have in their possession what you consider a delivered price, but which they must compute, rather than for you to give them a delivered price in advance of the delivered quotations, is that correct?

A. Yes, sir, on the basis that it is easier to divide that work among 200 agents, rather than work it all out at one point.

Q. It would be more difficult for you to determine what your prices are, that is what their quotations are, if they quoted delivered prices at each one of the 60,000 destinations in the United States, rather than giving it on a basing point price plus the applicable freight therefrom; is that correct?

A. That is not correct.

Q. Would it be easier for you to determine the delivered price rather than from the basing point price at Pittsburgh?

A. Mr. MacIntyre, it does not take us very long to find out what the prices are that our competitors are quoting, particularly with the field organization that we have, and we get the prices in various parts of the country. I have had experience along those lines with similar problems on other products and I can tell you very easily what happened, and that was on a certain product where I found 64 different prices in the United States, that we determined what the price was, and that was our price all over
3826 the United States.

Q. That was on a product that was not sold on a basing point price basis, is that correct?

A. That is right.

Q. And you had 64 different prices in the United States?

A. That is right.

Q. And you found in that particular instance that in some locations it was fluctuating in one direction in one section and fluctuating in an opposite direction in another section at the same time?

A. Do you mean by that the price was going over our published price in one section and lower in another place?

Q. Yes, that product that you were just speaking about.

A. No, as a matter of fact our published price on that particular product, the distributor in that case wouldn't sell at a higher price because he couldn't get any more than the published price, but we found in every one of those cases, these 64 cases, that the price was lower, never higher.

Q. But did you find in some instances that from this level below your published prices on that product that they were moving in one section in one direction and moving in another section in an opposite direction?

A. No, sir, I just answered that question, they cannot, they did not.

3827 Q. That is, they all move in the same direction at the same time?

A. They all move in the same direction at the same time.

Q. In what way, Mr. Newman, could a buyer know his delivered costs any better through the use of your delivered price system, that is in the operation of your basing point system in selling conduit than if you quoted him a mill price f.o.b. New Kensington, Pennsylvania, and told

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him that if he did not desire—I mean if he did not desire to use the conduit at or near New Kensington, but desired to use it in Washington, D. C., and haul there, that his freight would be so much additional to that.

A. If he hauled that conduit, Mr. MacIntyre?

Q. Yes, by rail.

A. If he hauled the conduit himself?

Q. Yes.

A. In one of his trucks?

Q. No, by rail I am talking about.

A. If I understand that question right, you are asking me, can a consumer, if you want to use that term, buy f.o.b. mill, isn't that really what you are asking?

Q. No, I am asking you now whether or not it would be any greater advantage for a buyer in Washington, D. C., to buy on your basing point system of delivered prices than it would be to buy on a basis of f.o.b. mill, or have
3828 quoted to him a f.o.b. mill price, if you also told him at the same time what the freight would be from New Kensington?

A. I have never figured that one out, Mr. MacIntyre, but I would like to just find out for myself what the answer is.

Q. In other words, you cannot tell us what the reaction to the buyers would be if you gave him such advantages as those, can you?

A. Well, I didn't understand your question as to what the reaction of the buyer was. That was not my understanding of your question. I testified already that it has been my experience that the buyers have shown preference for a quoted price at destination.

Q. Since you have not done this other thing, I have just outlined, you cannot tell us now whether or not the buyer would prefer that because you heave never given him a chance, have you?

A. I do not know of any case where they have asked for it, except the f.o.b. mill prices, and I explained that this morning.

Q. But you have never given them an opportunity to buy on the basis I have outlined?

A. The opportunity is there if they asked for it, and I do not know of any case where they have.

Q. But you have never quoted it to them on that basis, have you?

A. They have not asked us, if they asked us we
3829 probably would.

Q. Do you recall what difference in price in downtown Chicago was brought about by your dropping the Evanston base?

A. May I have that question repeated?

Trial Examiner Norwood: Read it.

(The question referred to was read by the reporter.)

The Witness: I am not sure, but I think there might be a difference of about five cents a cwt. That is my recollection, Mr. MacIntyre.

By Mr. MacIntyre:

Q. That is a reduction?

A. That is right.

Q. Can you tell us then why it was that you did not drop the Evanston base prior to 1935 and thereby meet a condition which, according to the record here, existed? That is a competitive condition that existed prior to 1935?

A. I can answer that in this way, Mr. MacIntyre, that from 1933 up to, I think, about the middle of 1935, I was taking my instructions on rigid conduit from my superior, who is now dead, and during that period I was being trained, if you want to call it that, in my position as manager of conduit products sales at that time.

Q. You do not know why these competitive conditions were not met in Chicago during that period?

3830 A. I explained that just now, Mr. MacIntyre; I was taking my instructions from my superior, who is now dead.

Q. And you did not have any instructions to meet it?

Mr. Bozeman: I think, if Your Honor please, that questions referred to competitive conditions in Chicago, and there has been no definition of what they are, and I think if this line is going to be pursued any further that there ought to be some identification of what the subject of the question is.

Mr. MacIntyre: I hope to get that, because this morning the witness told Mr. Bozeman he made this change in 1935 to meet competitive conditions. Of course, my use of it is something in the same way he made his answers this morning. And we are going to try to find out about that matter.

Trial Examiner Norwood: Objection overruled.

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The Witness: Any change made prior to the middle of 1935 was made by the instructions from the man I reported to at that time.

By Mr. MacIntyre:

Q. You told Mr. Bozeman this morning that they were made to meet competitive conditions?

A. That is right. That was my understanding.

Q. And what do you mean by that term as used by you there?

A. That was the basis being quoted by other manufacturers.

3831 Q. In other words, it was to meet the price that others were quoting on a Chicago basis there at that time?

A. That is right.

Q. Although that had not been done for two years prior to that?

A. Prior to 1935?

Q. Yes.

A. As I told you a moment ago, Mr. MacIntyre, that was a sort of a training period.

Q. What do you mean by those competitive conditions, that is meeting the competitive conditions, other than making the price the same as your competitors there through the use of the Chicago base?

A. Isn't that a competitive condition?

Q. That is what you mean?

A. I mean this, Mr. MacIntyre, I have stipulated that our published prices are a hope, were a hope; now, when I say meeting competitive conditions, I mean by that we try to get as much for our conduit as any other manufacturer gets for his.

Q. When you say that you are meeting competitive conditions, you mean making them the same as your competitors' in this instance?

A. Not necessarily. I think I qualified that by saying our published price was simply a hope.

Trial Examiner Norwood: Do you mean making 3832 them the same or lower?

The Witness: The same, or lower; if it is necessary to go lower, yes, sir.

By Mr. MacIntyre:

Q. Do you consider yourself competitive when you make your prices the same as your competitors'?

A. If I can get that price for it, yes, sir.

Q. You are competitive?

A. With other manufacturers of conduit, yes, sir. If I can get that price for it.

Q. And that is what you meant when you used the term "meeting competition," or "meeting a competitive condition"?

A. Yes, sir, that is right.

Mr. MacIntyre: Is there a ruling now on the respondent's exhibits for identification 216 to 241, inclusive?

Trial Examiner Norwood: No. With respect to those exhibits, it seems to me that you put in a number of reports here from the field giving the bids of competitors and showing a lack of uniformity of prices, and showing where they lost business to someone else who bid lower, and it is already in evidence that anywhere from, I think, 20 to 40 per cent in some cases—it averages that—was sold off the card. This would only go to the same point.

3833 I have permitted a considerable amount of this matter, which is illustrative of the attitude the trade has to this matter and to the competition.

I have permitted this to go in to illustrate to the Commission just what these people do about it, and what they write back to the bosses, and I do not see that it is necessary for all this to be added to that, and besides that, here are letters to this manager there in Bridgeport, Connecticut, I think the majority of those letters are to him, and he refers to things here that are not just clear, and if these letters come in he should be here to be examined on them. I think he should explain it if these are necessary.

Mr. Bozeman: Your Honor, in the first place, the fact that some material has gone in on behalf of other respondents in this case does not necessarily help us, because, remember that each one of these respondents is accused of being a conspirator in this case. It is just as essential for this witness to have the documentary foundation for his knowledge of market conditions as it is for any other respondent in the case. Secondly, we cannot rely upon similar matter put in through some other respondent. In the third place, you recall, Your Honor, that you struck from the record testimony regarding the extent to which

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sales were on the card and off the card prior to January 31, 1939. Now, it seems to me that those documents
3834 can do no harm to anyone. They do serve as an indisputable foundation for this witness' testimony regarding his knowledge of conditions, his familiarity with conditions, and the extent of his familiarity, and they are put in only for that purpose. We are not putting them in to lug in some statement for the truth of the matter asserted by someone who is not here to be examined.

I submit, on the basis of ruling previously made, if I may mention them, that those are admissible.

Trial Examiner Norwood: These are marked for identification, and the counsel can take them up to the Commission, and if they want them they may take them. I think I will sustain an objection to it. I will give the counsel his exception.

Mr. Bozeman: Does that apply to the letters that came directly to Mr. Newman?

Trial Examiner Norwood: Yes, I think that applies to all of them.

Mr. Swope: We have an exception, I suppose?

Trial Examiner Norwood: Yes. Go ahead.

Mr. MacIntyre: That is all I have for the witness.

Mr. Bozeman: May we have a five minute recess?

3835 Trial Examiner Norwood: Proceed.

By Mr. Bozeman:

Q. Mr. Newman, do you have any personal recollection on the extent to which General Electric Company conduit was sold at the current card during the years 1936, 1937 and 1938?

A. Yes, I do.

Q. Will you please state to the best of your recollection what percentage of the sales were off the card during those years?

A. Anywhere from 40 to 50 per cent.

Q. Mr. Newman, did you ever receive any personal knowledge or any notice of any agreement being made between anyone on behalf of General Electric Company and Mr. F. J. Kennedy regarding the so-called Williamsburg power plant job?

A. No, sir. I testified to that, that I did not.

Q. That is insofar as it affected prices or anything like that?

A. That is right.

Q. Referring to the meeting at the Hotel Biltmore in New York on January 6, 1937, did anyone at that meeting state to you—I mean anyone of the agents who attended that meeting—say to you that the agents at that meeting represented all of the agents of the industry as a class?

A. No, sir, nobody did.

3836 By Mr. Swope:

Q. Mr. Newman, you testified on cross that your salesmen were still in a position to investigate specific job contracts?

A. That is right.

Q. Did you find that when you used them that it worked very well?

A. No, it does not work out well at all. It takes too much time of the salesmen doing an investigating job instead of a selling job.

Mr. Bozeman: Your Honor, I have one more question.

Trial Examiner Norwood: Go ahead.

By Mr. Bozeman:

Q. On cross-examination, Mr. Newman, you referred to a buyers' market existing during a certain period. Did you mean by that that the buyers' market as described by you extended during the entire period from 1933 through 1937?

A. No. When I referred to 1933 to 1937 I was talking in general. There was a short period there, as I recall, from the latter part of 1936 and the early part of 1937 where there was a substantial demand for rigid conduit.

Mr. Bozeman: That is all.

Trial Examiner Norwood: Thank you, Mr. Newman.

Mr. MacIntyre: I have some questions if they are through. Are they finished?

3837 Mr. Bozeman: I am.

Trial Examiner Norwood: Is it about something that was brought out on redirect?

Mr. MacIntyre: Yes, sir.

Trial Examiner Norwood: Go ahead.

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Recross Examination by Mr. MacIntyre.

Q. Mr. Newman, you just told Mr. Bozeman about what percentage of your sales were made off the card during 1936, 1937, and 1938. Is it your memory and recollection as to the percentage of sales which were made off card any better for those years than it is for the years 1939 and 1940?

A. Just as good.

Q. Well, is it any better?

A. I would say it is just as good as it was, 1939 and 1940.

Q. Well, is it any better?

A. I wouldn't say it is any better, but I still say, Mr. MacIntyre, it is just as good as that.

Trial Examiner Norwood: He did not ask you if it was just as good. He asked if it was any better. Answer the questions.

The Witness: No, sir, it is no better.

By Mr. MacIntyre:

Q. Is your memory as to 1939 and 1940 just as 3838 good as it is for 1936, 1937 and 1938?

A. Just as good.

Q. Now, will you tell us, please, what the percentage was that your company made—that is what percentage of its sales that your company made off the card for the year 1940?

A. That would vary by months, but the average over-all?

Q. The average over-all.

A. I would say around 32, 33 per cent.

Q. In other words, you consider that a weighted average—that is, a weighted average in terms of your percentage in sales off cards in the year 1940 was 32, is that correct?

A. About that, yes.

Q. What would you say, by way of weighted average of the percentage of the sales that your company made off the card for the last six months of 1939, which are set forth on respondent's exhibit 242?

A. The last six months of 1939?

Q. Yes.

A. I would say roughly a weighted average would be about the same, about 32 or 33 per cent.

Q. About 32 or 33 per cent?
A. That is right.
Q. When you gave that answer of 32 per cent in response to one of the immediately preceding questions, and 32 or 33 per cent is the response to the last question,
3839 did you mean to say that that was 32 or 33 per cent of the sales were made off the card, or that 32 or 33 per cent were made on the card?
A. I was talking about the percentage off the card.
Q. Do you consider, Mr. Newman, that it is any more trouble for one of your salesman to investigate a contract in the field than for anyone else to investigate a contract in the field?
A. May I have the question read, please?
Trial Examiner Norwood: Read it.
(The question referred to was read by the reporter.)
The Witness: I don't consider it any more trouble, but I do know it takes a lot of time that should be devoted to other duties.

By Mr. MacIntyre:

Q. You do not think it would take any more time or trouble for him than if others do it?
A. No, I do not think so.
Q. And you consider that there was no buyers' market in conduit during late 1936 and early 1937?
A. There was a period there where there was a heavy demand for conduit, yes, sir.
Q. You do not consider that it was a buyers' market during that period of time?
3840 A. No, sir, the demand being heavy it wouldn't be a buyers market.
Q. You would consider then that that is one of the few periods of time, if not the only period of time during the four year period of 1932 to 1937, in which the manufacturers would have had any degree, or substantial degree of control over prices that they could fix themselves, is that correct?
A. I don't know of any case. No, I would say no, that there is no control over prices. The price control depends upon the prices quoted by other manufacturers. I think I understand your question correctly.
Q. Would you say that that is the only factor that would affect prices as of that particular period of time?

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A. At times, Mr. MacIntyre, even in a sellers' market we have to meet the prices of the other manufacturers.

Q. You consider that that was what you were doing in late 1936 and early 1937?

A. In some cases where we found such a condition existed.

Q. You just met other manufacturers?

A. That is right.

Mr. MacIntyre: That is all.

Mr. Bozeman: Just one question, Your Honor.

Trial Examiner Norwood: Yes.

Redirect Examination by Mr. Bozeman.

Q. Mr. Newman, you were asked certain questions
3841 as to the percentages off the card during the period subsequent to January 1, 1939.

A. Yes, sir.

Q. Now, will you state what was the percentage off the card from January, 1939, down to and through February, 1941.

A. From 1939 to 1941, inclusive?

Q. Percentage off the card for that entire period.

A. I would say somewhere around 32, 33 per cent.

Mr. Bozeman: That is all.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

MORRIS L. JACOB resumed the stand and testified further as follows:

Direct Examination by Mr. Poskanzer.

Q. Mr. Jacob, you were employed by the Cohoes Rolling Mill Company?

A. Yes, sir.

Q. In what capacity?

A. General manager.

Q. How long have you been employed as general manager?

3841-A A. Since about May, 1938, I believe.

Q. And where is their plant?

A. Cohoes, New York.

Q. Were you employed at Cohoes, New York, prior to that time?

A. Yes, sir.

Q. In what capacity?

A. As assistant general manager.

Q. And for what period of time?

A. For a period of approximately two years.

Q. So you have been conversant with the business of this company since about 1936?

A. That is right, sir.

Q. Do you know Mr. Arthur McFadden, formerly general manager of this company?

A. Yes, sir.

Q. Do you know where he now resides?

A. Yes, sir.

Q. Where?

A. Toronto, Ontario.

Q. Canada?

A. Yes, sir.

Q. How long has he resided there?

A. I believe since 1935, possibly the middle of that year.

Q. And he has had no official connection with the
3842 Cohoes Rolling Mill since that time?

A. That is right.

Q. What products does the Cohoes Rolling Mill Company make?

A. Wrought iron, steel pipe, and rigid steel pipe conduit and nipples.

Q. What percentage of its business is rigid steel conduit?

A. In the past years it has been approximately ten per cent.

Q. When did the Cohoes Rolling Mill Company go into the rigid steel conduit business, as near as you know?

A. I would say about 1926 or 1927.

Q. Prior to that it never manufactured rigid conduit?

A. Or any steel items.

Q. What is the process used by the Cohoes Rolling Mill Company in its manufacture?

A. Of rigid conduit, you mean?

Q. Yes. Speaking now of rigid conduit.

A. We take the merchant steel pipe as it is made at our—

Q. What do you first buy to make the conduit?

A. We purchase skelp.

Trial Examiner Norwood: I think we have gone over that process of manufacture of conduit. Is there any difference between the way he manufactures than the others? You can go into that.

Mr. Poskanzer: The only purpose of asking that was that some of these respondents buy their pipe. I want to show that we have a process preceding that.

3843 Trial Examiner Norwood: Let us go to the meat of it.

By Mr. Poskanzer:

Q. You buy the skelp and make the pipe?

A. That is right.

Q. And then you take the pipe and make black or galvanized conduit?

A. Yes, sir.

Q. And that conduit you sell in various parts of the country?

A. That is right.

Q. What is the system of selling you use?

A. We employ manufacturers' agents.

Q. Jobbers?

A. No, manufacturers' agents as salesmen.

Q. As salesmen?

A. That is right.

Q. Who do they sell to?

A. We sell to wholesalers, jobbers, if you will, the railroads, some industrialists.

Q. Do you sell direct or by the consigned stock method?

A. We use both methods.

Q. Do you know what percentage of the sales of Cohoes Rolling Mill Company are on the consigned stock method?

A. I would say 25 per cent or less.

Q. And that would leave about 75 per cent of direct sales?

3844 A. We call them outright purchases.

Q. Outright purchases?

A. Yes, sir.

Q. What kind of—what form of consigned stock agreement do you use?

A. Do you mean the present form that we are using?

Q. Yes.

A. It was a form that was suggested by the Organiza-

tion Service Company, which we reviewed, and submitted to our counsel for approval. I believe that our counsel thought that the form was better than the one we were using, and we adopted it.

Q. What is the capacity of your conduit plant?

A. We can produce about 800 tons a month.

Q. I believe on your previous testimony you did testify as to the method of sale by price card?

A. Yes, we publish a price card.

Q. I think that has been gone into. Mr. Jacob, have you made an analysis of the sales of rigid conduit by the Cohoes Rolling Mill Company as to the sales on or off card?

A. Yes, sir.

Mr. Poskanzer: I ask that these two sheets be marked for identification.

(The documents referred to were marked "Respondent's Exhibits 255-A and B" for identification.)

3845 By Mr. Poskanzer:

Q. Mr. Jacob, I show you Respondent's Exhibit for identification 255-A and 255-B and ask you if that is what was prepared by you, or under your direction?

A. It was prepared under my direction.

Q. Was it checked by you as to its accuracy?

A. It was.

Q. Will you state what it represents?

A. This represents our total sales starting with our card number 74, issued November 17, 1936. It goes through the period up to and including January 13, 1941. The exhibit shows the tons which were sold at the various periods prepared on a monthly basis. The amount of tons that we sold at the card—wait a minute. The amount of tons at the card, the amount of tons at other prices, the total amount of tons sold during the month, and the percentage of conduit sold below cards compared to the total tonnage sold for the month.

Q. It does not show any tonnage sold above the card for any month?

A. No, we were never able to get any premium for any of our conduit.

Mr. Poskanzer: I offer this in evidence.

Trial Examiner Norwood: That is a tabulation, is it?

3846-7 Mr. Poskanzer: Yes, by months.

Trial Examiner Norwood: What about the supporting data?

Mr. Poskanzer: He has checked it, and vouches for its accuracy.

Trial Examiner Norwood: Is it available? Do we have it here?

Mr. Poskanzer: I do not have it here, but we can produce all of the data. It is all intact.

Mr. MacIntyre: I would like to ask the witness a question or two about this.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Have you included in this tabulation, Mr. Jacob, the tonnage which had been shipped under contracts which were entered into on dates previous—on dates a month previous to the date of the shipment?

A. Yes, I believe that is included. We have included all shipments that we have made, being that published price filed at that time.

Q. And in many cases where you made those shipments under contracts—that is contracts which antedate by several months the date of the shipment—there are many instances of the price having changed between the date of the contract and the date of the shipment, is that correct?

3848 A. That would be true. I would like to elaborate a little on that, if I may.

Trial Examiner Norwood: Go ahead.

The Witness: By stating that we have never accepted contracts in any volume, or for any considerable amount of tonnage; it has never been our practice to do so. The tonnage that we ship against contracts would represent a very small proportion of that amount.

By Mr. MacIntyre:

Q. That tonnage is involved in shipments where prices have changed in the manner that I have just outlined between the date of the contract and the date of the shipments, isn't that correct?

A. Correct.

Q. And you have made no distinction on this tabulation?

A. No, because it represents less revenue to us.

Q. That is. you cannot tell which of those fall within a contract and which fell without the contract, can you?

A. No, not without going over it all again.

Q. You cannot tell that from looking at the tabulation, can you?

A. No.

Q. Is it not also true, Mr. Jacob, that many of these shipments which are shown by this tabulation to have taken place during the month of March, 1937, were made on commitments which you made to your customers
3849 on the card or at the card which immediately preceded card 76, in accordance with the custom in the industry to extend, or to accept orders up to 15 or 30 days at the old card, after a new one has been issued?

A. That might be true only for the immediate period following the card.

Q. Yes, but during March, 1937.

A. Probably the April shipments; it might be them, yes.

Q. Some of March and some of April?

A. Yes, sir.

Q. Your card 76 being issued on March 10, 1937.

A. Yes, sir.

Q. So many of the shipments that immediately followed that were made on card 75, or 72, which otherwise was in effect immediately preceding card 76, in accordance with the custom of the industry in accepting orders up to 15 or 30 days after the issuance of a new card?

A. That is correct.

Q. And not necessarily a concession from the new card, but in accordance with the old card, in accordance with the policy?

A. That is right.

Q. And that would account in large part for this heavy percentage, 53 per cent, for the month of March, 1937, being off the card, is that correct?

A. That might or not. There may be some con-
3850 tracts in here. I wouldn't know.

Q. You cannot tell what percentage of that is involved in contracts and what percentage is involved in commitments within the first 15 days after the price changed, can you?

A. Correct. I have to reexamine all the figures in order to track it down.

Mr. MacIntyre: If Your Honor please, I object to this

tabulation on the ground that it is incompetent and it is irrelevant and immaterial. There is no way anyone determining what the truth is and what the fact is from the tabulation. It is misleading, when you look at the captions and then take the statements made by this witness on this voir dire cross-examination, and should not be received in evidence. I object to that.

Trial Examiner Norwood: What do you say to that?

Mr. Poskanzer: If Your Honor please, there may be, as Mr. Jacob has said, some slight commitments. We take no long term contracts, he has testified to that. There may be a few commitments and in the months where the card changed there would be some difference, but there are more months here where the card did not change. I think the Commission is entitled to the whole picture. If Mr. MacIntyre wants a breakdown of the months where the card changed we would be very glad to furnish it. I do not think he wants it.

Trial Examiner Norwood: Cannot counsel come
3851 to some agreement about these items which are not satisfactory?

Mr. MacIntyre: There is no way of separating them, if Your Honor please. The witness has stated that while he does not run a particularly heavy percentage in long term contracts, but nevertheless his company does have some long term contract business, and they have a higher percentage of short term contract business.

Trial Examiner Norwood: Does this show one complete average for the entire time here?

Mr. Poskanzer: It shows it by months.

Mr. MacIntyre: One complete average though for each month, and it does not break it down to show which is which, contract business, current business, or what.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

I will overrule the objection.

Mr. MacIntyre: If Your Honor please, this is offered for the purpose of showing what percentage of sales are made on the cards, but it is obvious that where shipments were made in a particular month on a contract entered into on a previous month, and at a time when prices were different from the prices prevailing at the time of shipment, and if that particular shipment is listed as an off card sale, it would be misleading.

Trial Examiner Norwood: I think that would go
3852 to the weight of this testimony which is offered here, and he has promised to give you a breakdown on any items that you specify there, and I think that it might be admitted for whatever probative value it may have.

Mr. Poskanzer: If Your Honor please, I want to call Mr. MacIntyre's attention to this. Card No. 76 went in March 10, 1937, and card No. 77 went in in July 11, 1938. There are about 15 months in there. Now, he certainly does not contend that we carried contracts over from March, 1937, down through July, 1938. Your contract commitments are 15 or 30 days. This is perfect here.

Trial Examiner Norwood: I will overrule the objection and receive the exhibit, with the other understandings which appear there in the record.

Mr. Poskanzer: Any records which Mr. MacIntyre wants in connection with that they will be available to them.

RESPONDENT'S EXHIBITS NOS. 255-A and 255-B were offered and received in evidence.

By Mr. Poskanzer:

Q. Mr. Jacob, was the Cohoes Rolling Mill Company a member of the National Electrical Manufacturers Association at any time?

A. I don't know.

3853 Q. You never heard that they were?

A. You are talking of NEMA?

Q. NEMA.

A. I can't say whether they were or not.

Q. Were they a member of the Rigid Steel Conduit Association?

A. Yes, sir.

Q. For what period of time, do you know?

A. We were members in and out so often that I couldn't tell you the exact dates which we were members and not members.

Q. Do you remember a time at which you resigned and never went back?

A. That was the final resignation that was made while I was at the plant.

Q. When was that?

A. That appeared in the previous testimony, but I don't remember.

Q. In the record?
A. I don't remember the exact date off-hand, no.
Q. Did you ever attend any of the meetings of the National Electrical Wholesalers Association?
A. No, sir.
Q. Did anyone on behalf of Cohoes ever attend at any of those meetings?
3854 A. No, sir.
Q. Were you regular in your attendance at the Rigid Steel Conduit Association meetings?
A. No, sir.
Q. Was your company represented there at all meetings?
A. No, sir.
Q. Did the Cohoes Rolling Mill Company have a form of specific building contract?
A. Only within the last several years.
Q. Did you use it to any extent?
A. Only to a very limited extent.
Q. Can you tell us why?
A. Because, as previously stated, we didn't enter into building contracts; we took no large commitments of any kind; for that reason the contracts were used only to a very limited extent.
Q. Can you tell what your status was in respect to the size of the company in the industry? Were you one of the large or one of the small companies?
A. I think we were either the smallest or next to the smallest in the industry.
Q. Did you ever ask the Rigid Steel Conduit Association for any information on closed transactions?
A. I think it—off-hand I don't remember doing it at all, if my memory serves me correctly.
3855 Q. What method of invoicing do you say the Cohoes Rolling Mill Company used?
A. We billed at our current published price.
Q. How do you handle a sale when it is off the current published price?
A. By issuing a credit memorandum to the purchaser for the amount of the concession that we have granted.
Q. So that the face of the invoice does not show the final net price?
A. Only when we sell at the cards.
Q. So when the sale is off card the invoice itself does not show the final price?

A. That is correct, sir.

Q. Does the Cohoes Rolling Mill Company fix the resale price of its product?

A. The published card is in effect the resale. I could say it is the suggested resale.

Q. Mr. Jacob, there has been offered in evidence here some correspondence between the Baldwin Hall Company at Syracuse, New York, and the Cohoes Rolling Mill Company. I do not have the copies here. Are you familiar with that correspondence? Do you recall?

3856 A. I have seen the correspondence.

Q. You have seen it?

A. Yes, sir.

Q. I show you Commission's Exhibit 522, and ask you what that is (handing exhibit to the witness)?

A. That is a letter written by our Mr. J. W. Cooper, sales manager, to the Baldwin Hall Company, Incorporated, Syracuse, New York.

Q. Exhibit 524 is what?

A. That is a letter also written by our Mr. Cooper to the Baldwin Hall Company.

Q. Do you recall the situation that occasioned the writing of those letters?

A. Yes, sir.

Q. Will you explain it to the Court, please?

Mr. MacIntyre: I object. The witness did not write the letters.

By Mr. Poskanzer:

Q. The letters were written by your company?

A. Yes, sir.

Q. Mr. Cooper is your sales manager?

A. Yes, sir.

Q. The subject was discussed with you at the time the letters were written?

A. Yes, sir.

3857 Q. The condition was known to you?

A. Yes, sir.

Trial Examiner Norwood: Objection overruled.

Mr. Poskanzer: Go ahead.

The Witness: Will you repeat the original question, please?

(The following question was read by the reporter: "Q. Will you explain it to the Court, please.")

The Witness: The Baldwin Hall Company contacted us and called our attention to the fact that there was a very bad market condition in and around their territory occasioned primarily by the activities of some of our own jobbers from Metropolitan New York and Buffalo, who were offering our material at prices lower than the Baldwin Hall Company were selling our material. They asked us to try and correct the situation if we could. I think that is about the basis of the reason for the correspondence.

Q. You had those letters written to them?

A. Yes, sir.

Q. Were you able to correct the situation?

A. Unfortunately, no.

Q. Will you state why?

A. For the simpler reason that our sales policy, in view of the fact that most of our jobbers buy their material, thought that they had a right to sell their material
3858 so purchased at any price they saw fit, in any territory they wished to offer it.

Q. You could not keep them out of the Syracuse market?

A. Not very well.

Q. You could not dictate their resale price?

A. Not under the circumstances.

Mr. MacIntyre: I object to the leading character of the question. I believe the witness is qualified to testify.

Trial Examiner Norwood: The point is well taken.

Mr. Poskanzer: I want to shorten this thing up, if your Honor please. That is all.

Trial Examiner Norwood: Go ahead.

By Mr. Poskanzer:

Q. Have you disciplined any jobber, or discharged him as your jobber by reason of this condition?

A. No, sir.

Mr. MacIntyre: That is objected to for the same reason, and for the reason that it calls for a conclusion.

Trial Examiner Norwood: Objection overruled. It is slightly leading.

Mr. Poskanzer: I will say, what was done with respect to the offending jobbers, I will put the question in that form.

The Witness: Nothing whatsoever.

3859 By Mr. Poskanzer:

Q. Has the Cohoes Rolling Mill Company ever discharged a jobber?

A. To the best of my knowledge and belief, no.

Q. Now, I want to ask you one further series of questions. There has been some testimony here, Mr. Jacob, about bids on public contracts for various governmental and other agencies. Does the Cohoes Rolling Mill Company ever bid on a public contract?

A. Direct?

Q. Yes.

A. No, sir.

Q. Your name, therefore, would not appear as a bidder really with respect to any public bid?

A. That is right.

Q. Your jobbers may bid?

A. They may bid, not necessarily on our material.

Q. That is right. Directly, you do not bid, never have?

A. That is right. Never have.

Q. When you referred, Mr. Jacob, to the suggested resale, that is in your contract with the consigned stock jobbers, is that right?

A. That is right.

Q. Have you a suggested resale price with your direct sales?

A. No, I don't believe you can call it a suggested
3860 resale, because it has never been maintained, so it bears no weight whatsoever.

Q. The record shows, Mr. Jacob, that at one time the Cohoes Rolling Mill Company filed with the Rigid Steel Conduit Association a list of its jobbers. Do you recall anything about that?

A. I believe that was taken from our records by one of the Commission's Examiners. Apparently it was authentic, being taken from our files, that the circumstances were with reference to the preparing of that list I cannot exactly tell you.

Since your connection with the company, has anything been done about that list by the Rigid Steel Conduit Association?

A. As far as I know the list was filed, and that is all I know about it.

Q. You never had any correspondence about it?

A. So far as I am concerned.

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Q. And no transaction with anybody about it?
A. No, sir.
Q. Mr. Jacob, did the Cohoes Rolling Mills Company at any time agree with its competitors, or any of them, to maintain prices of rigid steel conduit?
A. No, sir.
Q. Did the Cohoes Rolling Mill Company at any
3861 time agree with its competitors or any of them, to sell its product on a basing point system?
A. No, sir, we followed the basing point system, as I testified the last time I was at this hearing, primarily because of the method in effect at the time that grew up in the industry, it being a late comer in the industry.
Q. Did the Cohoes Rolling Mill Company at any time agree with its competitors, or with anyone of them, to sell its stock on a consigned stock basis for the purpose of controlling prices?
A. No, sir, and the facts in that particular case prove exactly the contrary, because most of our sales are made on an outright purchase basis.
Q. Mr. Jacob, you said before that you bought your skelp. Is there any skelp in and around Cohoes, where you manufacture?
A. No, sir.
Q. What market do you have to get your skelp?
A. Either the Pittsburgh district, Youngstown, Chicago, or Sparrows Point, the producing centers; Wheeling, West Virginia, is one, too.
Q. You use coal in your plant, too, do you not?
A. Yes, sir.
Mr. MacIntyre: I object to such irrelevant matters, as going into the use of coal.
Trial Examiner Norwood: I ask counsel not to
3862 bring in any more of that than he considers necessary.
Mr. Poskanzer: I am not.
Mr. MacIntyre: I am pointing out that this witness has testified on other similar matters heretofore, insofar as he was permitted to do so over objection.

By Mr. Poskanzer:

Q. Where do you buy your coal?
A. It is shipped to us from in and around Pittsburgh, the Pittsburgh district.

Q. You have to pay freight on your coal to Cohoes?

A. Yes, sir.

Q. And you have to pay freight to Cohoes on your raw material?

A. That is skelp, and almost everything else we purchase.

Q. None of your raw materials are purchased near your plant?

A. No, sir.

Q. Do you know, based upon your experience, about the fluctuations in the conduit industry in this country?

A. The fluctuations in what direction?

Q. Demand or sale.

A. Well, I think that the figures prove that there has been a very decided fluctuation in the demand for conduit over a period of years.

Q. What is the basis of that fluctuation?

3863 A. Primarily the American Iron & Steel Institute figures have indicated that over a period of time.

Q. You get figures from there?

A. Published figures.

Q. Do you know what causes the fluctuation, as a matter of business experience, not what you have read somewhere?

A. Well, business experience would naturally tell us that building activities govern the rate at which conduit is sold.

Q. When there is more building activity there is more conduit sold?

A. Yes, sir.

Q. When building activity ceases the market drops?

A. The market collapses.

Q. Can you state, based upon your experience, whether or not there has been any increase in sales when the price of conduit has been reduced?

A. Speaking for our own company, I do not think that we have noticed any increase due to a decline in price.

Mr. MacIntyre: I object to the answer and move that it be stricken out as not responsive to the question asked. The question asked whether one thing followed another, and the witness said that he has not noticed that one was due to another.

Trial Examiner Norwood: Objection overruled.

Mr. MacIntyre: I do not object to the question,
3864 but I do object to the answer and move that the answer be stricken out.

Trial Examiner Norwood: As not responsive?

Mr. MacIntyre: Not responsive to the question.

Trial Examiner Norwood: Read the question.

(Question and answer repeated by the reporter.)

Trial Examiner Norwood: Motion denied.

By Mr. Poskanzer:

Q. In making shipments of conduit to your customers or dealers does the Cohoes Rolling Mill Company prepay the freight?

A. Yes, we prepay freight.

Q. On all shipments?

A. Yes, sir.

Q. Whether direct or consigned?

A. Yes, sir.

Mr. Poskanzer: That is all.

Trial Examiner Norwood: Cross-examine.

Cross-Examination by Mr. MacIntyre.

Q. Does your labor in your plant at Cohoes, New York, in the manufacture of conduit cost you the same in the production of 100 feet of ½ inch conduit as labor costs one of your competitors in Pittsburgh, Pennsylvania?

A. I have never seen any of our competitor's cost
3865 figures. I wouldn't know.

Q. Is the management of your plant and sales of your company the same cost per hundred feet of ½ inch conduit as it is to your competitors? That is the cost of their management of production and sales in Pittsburgh, Pennsylvania?

A. I haven't seen competitors' figures, so I wouldn't be able to answer that question.

Q. Is the capital costs per hundred foot of production and sales of conduit in your company the same as the capital costs in production and sales of like conduit by your competitors of Pittsburgh, Pennsylvania?

A. Mr. MacIntyre, those figures are not available to me, at least. I do not feel qualified that I can answer the question along this line, not having the facts and figures available.

Trial Examiner Norwood: Off the record a minute.

(Discussion off the record.)

By Mr. MacIntyre:

Q. Mr. Jacob, how is it that you can say that no increase in volume ever occurred due to a decrease in price?

A. I believe you referred to the records. I did not say positively, but I think I said from our experience.

Q. How can you say that in all of your experience there was no increase in volume due to a decrease in price?

A. I think if you refer to my exact answer it is
3866 not exactly as you put it to me, Mr. MacIntyre.

Trial Examiner Norwood: What did you say, do you know?

The Witness: It was not exactly the way Mr. MacIntyre was putting it to me. There was a qualification. I would like to have it read, if you please.

(The record was read by the reporter.)

By Mr. MacIntyre:

Q. How can you testify here at this time, Mr. Jacob, that there was no increase in volume due to a decrease in price?

A. In my experience I believe that to be correct.

Q. Do you have anything other than your belief about it?

A. I think we can substantiate that by actual records.

Q. How can you do that?

A. We know what our average sales have been, and we can see whether our volume has picked up at the time that prices were reduced, over and above our normal sales volume. I do not think that would be a difficult job.

Q. That is a matter of reasoning something coming from what you saw happen in some other direction, is it not?

A. No.

Mr. Poskanzer: I object to that question.

Trial Examiner Norwood: He is cross-examining the witness. Objection overruled.

3867 Mr. MacIntyre: I am asking about his belief now.

Mr. Poskanzer: He said from the records.

The Witness: I would say that I still stick to my original statement.

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By Mr. MacIntyre:

Q. Do you have any records in the offices of your company which state that this particular failure to increase volume was due to or was not due to a decrease in price?

A. Mr. MacIntyre, we have sales records. We know each and every item of conduit that we sell. We know exactly what our billings are each month. If there has been a change up or down we can ascertain very quickly whether our volume has increased or decreased.

Q. And you have reasoned from the fact that if on some occasions your volumes did not increase at the time you decreased prices, that one was due to the other, have you not?

A. I do not think there was any particular association between the two.

Q. How are you then able to testify that you believe that increases in volume are not due to decreases in prices?

The Witness: Restate your question, please.

Trial Examiner Norwood: Read it.

(Last question read by the reporter.)

3868 A. For the simple reason that there is a definite demand for conduit. There is only so many tons of conduit sold a year, and that is dependent entirely upon the building activity. I do not think the price has anything to do with the amount of conduit that is sold.

By Mr. MacIntyre:

Q. That is your thought on it?

A. That is my opinion. You have asked for my opinion.

Trial Examiner Norwood: Can you recall or state any facts in your experience in your own business on that point?

The Witness: No, I do not think I have had anything that occurs to me at the moment that would help illustrate the point.

Trial Examiner Norwood: You recall occasions when there was a decrease in price, do you not?

The Witness: Yes, sir.

Trial Examiner Norwood: Do you recall whether or not at those times there was an increase in demand?

The Witness: I do not think that a decreased price ever brought out any volume.

Trial Examiner Norwood: I am talking about your recollection now. We want to get some factual evidence, if you have it, on that point, not just your belief.

The Witness: We could give you the actual figures, 3869 if the Court desires it, from the records.

Trial Examiner Norwood: My question is, do you recall now any facts which might be associated so as to throw some light?

The Witness: I do not think I would want to trust my memory on that point.

Mr. Poskanzer: I submit that he has testified to his experience on it, that it has not produced increased volume.

Trial Examiner Norwood: We want to get the basis of his recollection there as to his experience.

Mr. MacIntyre: If your Honor please, may we ask that the question, one of the last questions dealing with this subject, which was objected to on direct examination, be reread. I want to make a motion with respect to it. Maybe the reporter can find it.

Trial Examiner Norwood: Yes.

(Record read by the reporter.)

Mr. MacIntyre: Now, if your Honor please, I move to strike from that answer that has just been read that portion that states, "due to decline in prices," because it is obviously, when you look to what has been brought out here on cross-examination, a speculation and conclusion.

Trial Examiner Norwood: Motion allowed.

Mr. Poskanzer: I want to object to the motion, 3870 if your Honor please, because I think it was perfectly responsive. He said based upon his experience, and limited it to his own company.

Trial Examiner Norwood: As it appears it is more an opinion and counsel may go into that on the redirect, if he wants to, if he can get anything accurate or exact. He says they are from his records. He could determine some figures on that, and I think it is an important matter that ought to be dealt with factually.

Mr. Poskanzer: All right.

By Mr. MacIntyre:

Q. You told Mr. Poskanzer just a few minutes ago that your company sells conduit in various parts of the country, do you recall that statement?

A. Yes, sir.

Q. That would include Buffalo, New York?

A. Yes, sir.

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Q. Scranton, Pennsylvania?

A. I don't know if we sell in Scranton, Pennsylvania; probably we do.

Q. Altoona, Pennsylvania?

A. We may have made some sales there. I am not familiar with every point that we sell to customers.

Q. Do you recall about Altoona?

A. I wouldn't want to trust my memory on that particularly.

3871 Q. Columbus, Ohio?

A. We have sold in Columbus, Ohio, yes.

Q. From time to time?

A. Yes, off and on.

Q. And your sales in Columbus, Ohio, would be just as much on the card as they would be in many other sections of the country, is that correct?

A. No, that wouldn't be true.

Q. Why?

A. It has been our experience that the large metropolitan centers, that in those centers the competitive condition has been more severe than what it is in the smaller communities. I am speaking of Columbus now in comparison, say, to New York, or Chicago, or some of the other large centers.

Q. It is your testimony then that there are more sales, a greater percentage of your sales are made on the cards, say, in Columbus, Ohio, than would be the case in New York City, is that correct?

A. Yes, sir.

Q. And that would also be true of Dayton, Ohio?

A. I don't know whether we made any sales in Dayton, Ohio.

3872 Q. You make sales in Cleveland from time to time?

A. We have made some there, yes, sir.

Q. And a greater percentage of your sales in Cleveland, Ohio, would be made on the card than would be made in some other sections of the country?

A. Aren't you stretching a point now by putting Cleveland in the category of the small town? I think it is a pretty good sized place, don't you?

Q. Of course, it is smaller than Chicago.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

By Mr. MacIntyre:

Q. What are the facts there?

A. No facts.

Q. That is your percentages of sales on the cards in Cleveland are greater than those in New York City, are they not?

A. Off-hand I don't think we made a dozen sales within the last year to Cleveland.

Q. But you do make them from time to time?

A. From time to time.

Q. And some of them on the cards?

A. Some of them are on the card, some of them are off the card.

3873 Trial Examiner Norwood: Will you tell me what percentage of off card sales are represented by sales to contractors?

The Witness: We do not sell any contractors direct.

Trial Examiner Norwood: What class of trade is there that you make the off card sales to the most?

The Witness: All of our concessions have been allowed to the jobber, and the jobber in turn would reimburse the contractor if there was a concession involved.

Trial Examiner Norwood: Indirectly it is to the contract trade, is it not?

The Witness: We could not tell from the concession we gave the jobber whether or not he passed it on. He may or he may not.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. You do not know then as to what percentage of your total business which has been handled through jobbers, which is shown by this Respondent's Exhibit 255, were made at card prices by the jobbers, do you?

A. No.

Q. You do not know whether it is a larger percentage than that shown in the last column on this list?

A. Those figures represent our price to the jobber.

3874 Q. You do not know what percentage of these sales were made by the jobber to contractors and others who used conduit, at card prices, do you?

A. No, I don't think I would have that information available, except that it is obvious that where the jobber has asked us for a concession to meet a competitive con-

dition, in all probability he had to pass the concession along to the contractor that we allowed him.

Mr. MacIntyre: If Your Honor please, I move that that portion of this statement be stricken in which he says it is obvious that something probably happened.

Trial Examiner Norwood: Read the question and answer.

(The question and answer referred to were read by the reporter.)

Trial Examiner Norwood: Motion denied. Proceed.

Mr. MacIntyre: On the basis of the last two or three statements of the witness I again move that Respondent's Exhibit 255 be stricken from the record as indefinite and misleading information and as incompetent evidence.

Trial Examiner Norwood: Motion denied. Go ahead.

By Mr. MacIntyre:

Q. A higher percentage of your sales made in Albany are made on the card than those made in Buffalo or New York City, is that correct?

A. I am afraid you have to be more specific than
3875 that. You have to refer to the particular times involved. There are times that—

Q. Take 1940 as a time.

A. I would say that the proportion of sales in Albany and Buffalo on or off the cards would be about the same.

Q. What about Albany and New York?

A. In all probability I will have to check the records to prove this. I would say that our off the card sales in New York would be greater than our off card sales in Albany.

Q. In other words, you do not find it as necessary to deviate from any prices in Albany as you do in some other places in order to be competitive, as you put it?

A. Well, our policy is to try to keep our jobbers in as nearly a competitive position as possible, and when you ask me for percentages off and on the card, we fluctuate our policy because of conditions as we find them.

Q. You have not found those conditions such as would make it desirable on your part to sell at off card prices in Albany as much as you have other places?

Mr. Poskanzer: I object to that, unless it is limited to some specific time. I think it is time we got down to some specific facts.

Trial Examiner Norwood: Objection overruled.

The Witness: Will you repeat the question?

(The question referred to was read by the reporter.)

3876 Mr. Poskanzer: My objection to it, Your Honor, is this: there might be a condition in Albany today under which we might have to meet a greater cut than for any other place in the United States; that condition a month from now may exist in New York. Unless this question is limited as to the time it does not mean anything.

Trial Examiner Norwood: It is rather clear, I think, that he is inquiring as to general conditions here. I think so.

Answer the question if you can.

The Witness: Well, I can answer it this way, Your Honor, by saying that we have sold off card in Albany.

By Mr. MacIntyre:

Q. That does not answer my question. I am asking you if it is not a fact that you have found it less necessary, in order to meet the prices of your competitors, to quote prices off your card, in Albany, than you have in some other places.

Mr. Poskanzer: I object to that as calling for the conclusion of this witness. That the question is ambiguous. I do not know what he means by less necessary. That calls for the operation of this man's mind.

Trial Examiner Norwood: Objection overruled. Go ahead.

The Witness: Will you repeat the question?

3877 (The question referred to was read by the reporter.)

The Witness: Mr. MacIntyre, what you say could be applied to a number of points throughout the country.

Trial Examiner Norwood: He is not asking you about that. He is just asking about Albany.

The Witness: I would say yes.

Mr. MacIntyre: Read the question and answer.

(The question and answer referred to were read by the reporter.)

By Mr. MacIntyre:

Q. Why do you not show on the face of your invoices, instead of by credit memorandums, any concession that you make to a purchaser of conduit?

A. Well, it is a policy of billing that we instituted a

great many years ago that we used on the sale of all of our products. We use the master pricing policy, and it would greatly interfere with our method of billing if we showed the commission on the invoice.

Q. It would be more ascertainable on the part of people in the trade if you had departed from a card price, if it appeared on the invoice, than it is when you show your card price on the invoice and cut it by way of credit memorandum, is it not?

A. Not particularly, the invoice is just as easily
3878 seen by anyone else as a credit assigned to the invoice.

Q. The credit memorandum is not as easily seen as the invoice, is it?

A. Well, our credit memorandums are very specific, they refer to the invoice to which the credit applies, the amount of the invoice, and all the information is explained on the credit memorandum.

Q. It is not attached to and made a part of the shipping papers?

A. No, it is made after the shipment is made. We first have to find out how much is the amount of the invoice and then arrange for the credit note.

Q. There have been instances when jobbers operating under consigned stock agreements in the handling of your conduit, the form of which is now here as Commission's Exhibit 670, have submitted bids to public bodies, is that correct?

A. Yes, sir, I think that there have been some particular jobbers who have quoted on bids to public bodies.

Q. In submission of bids to public bodies, is that what you mean?

A. Yes.

Q. And in the submission of bids to public bodies, when they were operating under consigned stock agreements with you, those prices were your prices, were they not?

A. They were the prices that were suggested to
3879 the jobber he should use.

Q. Can you name jobbers who operated in the submission of such bids?

A. I think the Baldwin Hall Company have bid on some public openings. I think the Belknap Hardware Company, of Louisville, have.

Q. Anyone in New York City?

A. Baedinger Electric Company use our material.
Q. That is under your consignment agreements.
A. No. You asked for consigned stock?
Q. Yes.
A. I think Baldwin Hall would be the only one that would apply there. The other two are outright purchasers, and would not apply.
Q. Can you name any other consigned stock jobbers, operating under your consigned stock agreements making bids to public bodies?
A. Off-hand I don't recall, our consigned stock jobbers have been very small and would not be interested in that type of business as a rule.
Q. Why did you feel it was necessary for your company to protect one jobber in one territory from jobbers in another territory?
A. It has been our policy, as a matter of good practice, to have our jobbers operate in the territories imme-
3880 diately surrounding them. That has been our philosophy on jobber distribution.
Q. And that is true as to whether they were operating under consigned stock agreements, or buying outright for resale, is that correct?
A. Well, we have always felt that it is the proper approach to the jobbing problem.
Q. Irrespective of whether it is operated on consignment stocks or outright?
A. That is correct.
Mr. MacIntyre: I believe that is all.

Redirect Examination by Mr. Poskanzer.

Q. Mr. Jacob, you have had charge, have you not, of the price fixing policy of the Cohoes Rolling Mill Company in recent years?
A. That is right.
Q. You were familiar with the changes in cards that have been made from time to time since 1936 or 1937?
A. Well, since the latter part of 1936.
Q. Do you recall whether there was any increase in business, or in the demand for conduit, when a new card came out reducing the price?
A. I can't say that I can recall definitely when there was any increased demand for material when the

3881 price was dropped. As a matter of fact, for a time immediately after a drop in price business had a tendency to dry up. The jobbers always felt that the price was going to be lower, so the immediate result would be that there would be a slackening up of business, rather than an increase.

Q. Do you know whether card No. 77, and card No. 78 increased or reduced the price of conduit?

Mr. MacIntyre: I object to the question. It is unnecessary. The record has those cards and it shows whether or not they would reduce it or increase it.

Mr. Poskanzer: I want to show what he knows.

Mr. MacIntyre: And it is beyond the cross-examination anyway.

Trial Examiner Norwood: You can ask him whether or not the sales increased after the price decreased.

Mr. Poskanzer: That is what we are coming to.

The Witness: Off-hand, without having the cards in front of me I could not tell whether the price increased or not.

By Mr. Poskanzer:

Q. You have no recollection whether there was a decrease in card 77 from 76?

A. No, sir.

Q. Or 78?

A. No, I would have to have the card in front of me.

3882 Mr. MacIntyre: We have those cards in evidence, and the tabulation put in by some of the respondents' counsel show by what amounts they have fluctuated from each other.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

By Mr. Poskanzer:

Q. I ask you, based upon your experience in the management of this business and the fixing of its prices, whether you have noted any increase in business following a cut in prices in your company?

A. No, sir, we have not.

Mr. Poskanzer: That is all.

Trial Examiner Norwood: Are you through with this witness?

Mr. Poskanzer: I am through.

Trial Examiner Norwood: Any other questions?

(No response.)

Trial Examiner Norwood: You are discharged, Mr. Jacob. Thank you, sir.

(Witness excused.)

Trial Examiner Norwood: The hearing is now adjourned, to reconvene at ten o'clock tomorrow morning, in the conference room on the 28th floor of 15 Broad Street, New York City.

(Whereupon, at 4:30 p. m., January 6, 1942, the hearing in the above-entitled matter was adjourned.)

3885 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment yesterday, the hearing in Docket No. 4452 is now reconvened in the Conference Room, 28th floor at 15 Broad Street, New York, New York, January 7, 1942, at ten a. m.

3889 FRANK C. HODKINSON was thereupon called as a witness by the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Robison.

Q. Where do you reside, Mr. Hodkinson?

A. East Orange, New Jersey.

Q. Were you formerly connected with the Rigid Conduit business?

A. Yes, for many years.

Q. When did you first become connected with that business?

A. 1897.

3890 Q. And in what way did you at that time become connected with it? I mean, how did your connection with it arise and in what capacity were you connected?

A. As a young lawyer just admitted to the Bar. I took out articles of incorporation for the Safety Conduit Company and became a secretary of that company.

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Q. That was in 1897?
A. 1897.
Q. Did that company begin production of Rigid conduits?
A. Yes.
Q. Immediately after it was incorporated?
A. Yes.
Q. Where was its plant?
A. Rankin Station. That is on the Baltimore & Ohio Railroad, adjoining station to Braddock, Pennsylvania. sylvania.
Q. And those two points are near Pittsburgh, are they?
A. About eight miles from Pittsburgh.
Q. Now, sometimes shortly after 1897 was the name of the Safety Conduit Company changed to another name?
A. Changed to Safety-Armorite Conduit Company.
Q. About when did that occur?
A. I would say that change was made in 1899 or 1900.
Q. Who was the head of the company both under its original name of Safety Conduit Company and its later name of Safety-Armorite Conduit Company?
3891 A. John W. Garland was president, and Robert Garland was treasurer.
Q. Has the company in more recent times been given another name?
A. Yes. It was later known as the Garland Manufacturing Company. That is, I believe, the name today.
Q. How long did the original company maintain its plant for the production of Rigid Conduit at Rankin Station?
A. Until about 1902, 1901 or 1902.
Q. And then it was moved to another location?
A. Moved to West Pittsburgh, Pennsylvania.
Q. And has been there ever since?
A. Yes.
Q. That is the same plant now operating under the name of Garland?
A. I presume so. I haven't seen it for a number of years.
Q. But the last you knew it was?
A. Yes.
Q. How long did your connection with Safety-Armorite Conduit Company continue?
A. Until 1924.

Q. During that time did you know of the M. B. Austin Company of Chicago?

A. Yes, very well acquainted with them.

Q. Was there any business connection between
3892 that company and the Safety-Armorite Conduit Company?

A. Yes, I was—

Mr. MacIntyre: Just a second.

I object to all of these immaterial details of the history back in those days. They have no connection with any of the evidence that is in this case.

Mr. Robison: It will have a connection.

Trial Examiner Norwood: Yes. Objection overruled.

Mr. Robison: May I have the answer read?

Trial Examiner Norwood: Read it, please, Mr. Reporter.

(The answer referred to was read by the Reporter.)

Mr. Robison: Let us have the question read.

Trial Examiner Norwood: Read it, please.

(The question referred to was read by the Reporter.)

The Witness: The connection was that Austin was the representative, the sales representative in Chicago of the Safety-Armorite Conduit Company.

By Mr. Robison:

Q. When you say "sales representative", you mean it had charge of sales of that company in Chicago?

A. As a commission agent.

3893 Q. When you terminated your connection with the Safety-Armorite Conduit Company in 1924, did you at that time take on any connection with another producer of Rigid Conduit?

A. Yes. The American Circular Loom Company.

Q. Had that company prior to your becoming connected with it been known under another name?

A. The American Circular Loom Company was in its earliest days known as the Boston Electroduct Company.

Q. Have you been familiar with that company?

A. Yes.

Q. Know of its existence and operation?

A. Yes.

Q. When did that company begin the production of Rigid Conduit?

A. In 1897.

Q. The same year in which the Safety Conduit Company began production?

A. Correct.

Q. Where was the plant at that time of the Boston Electroduct Company?

A. At Versailles, which is a suburb of McKeesport.

Q. Pennsylvania?

A. Pennsylvania.

Q. And both of those places also are close to Pittsburgh?

A. Yes.

3894 Q. When you, as you stated, became connected with the American Circular Loom Company in 1924, in what capacity were you connected with it?

A. Vice president and general manager of the company.

Q. And you remained such until what time?

A. Until the company went out of existence in 1936.

Q. That was the end of 1936?

A. The end of 1936, December 31, 1936.

Q. Where was the plant of their company located when you became connected with it?

A. At Kennelworth, New Jersey.

Q. Was it producing Rigid Conduit at Kennelworth in 1924?

A. Oh, yes.

Q. What was the history of the ownership of that company, going back to somewhere around 1914?

A. The National Electric Products Corporation purchased the American Circular Loom Company back around 1914. I think it was in 1914.

Q. And for some time after that occurred did the American Circular Loom Company continue to produce conduit?

A. Oh, yes.

Q. Does it do so until, as you have said, it went out of existence at the end of 1936?

A. Oh, no. It did not. I would say in two or three years after I became connected with the company it
3895 ceased to manufacture Rigid Conduit at Kenilworth and had its materials produced for it by the National Electric Products Corporation at Ambridge or Economy. They are right adjoining.

Q. And again are they both near Pittsburgh, Pennsylvania?

A. Near Pittsburgh, yes.

Q. Referring back to the earlier days of the conduit industry referred to, what other companies became engaged in the production of Rigid Steel Conduit?

A. How far back do you want me to go, Mr. Robison?

Q. Well, you started with 1897?

A. Yes.

Q. Do you recall when Enameled Metals Company began production of Rigid Conduit, approximately?

Mr. MacIntyre: I object.

Major Quinn has been on the stand and given us the history of that company in so far as he could, and he is the general manager. We have had stories and history related by representatives of other companies in the record and the recollection of this man on it would not help us.

Trial Examiner Norwood: Objection overruled.

Mr. Robison is an able counsel and I am sure he will not waste our time. There is a different angle here, I think.

Go ahead.

Mr. Robison: Read the question, please.

Trial Examiner Norwood: Read the question, 3896 please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: Approximately 1902. That may be a couple of years out.

By Mr. Robison:

Q. Where was its plant located at that time?

A. At Etna.

Q. Pennsylvania?

A. Pennsylvania.

Q. That was also near Pittsburgh?

A. Near Pittsburgh.

Q. What do you recall about a company known approximately at that time as the National Metal Molding Company?

A. National Metal Molding Company was the former name of the National Electric Products Corporation.

Q. And when did that company begin the production of Rigid Conduit?

A. I would say at 1905.

Q. And that is the same company that you have a few moments ago referred to as having a plant at Ambridge, Pennsylvania?

A. Correct.

Q. Did the Clifton Manufacturing Company produce conduit for a time at about the period we are now speaking of?

A. Yes.

3897 Q. Where did it have a plant?

A. They had a small plant at Buffalo.

Q. Do you recall until about what date that company produced Rigid Conduit?

A. I would say they were in production until about 1922.

Q. Do you recall the Mark Manufacturing Company as a producer of rigid conduit?

A. Yes.

Q. Can you tell us about when that company began production of that product?

A. I would say that Mark started to produce conduit at Zanesville about 1907. Understand—

Q. I understand you are speaking—

A. —I am going back a long time. I am giving you those dates as accurately and closely as I can.

Q. Would you say it was a few years before that?

A. It might be a few years before that; not more than a couple of years before that.

Q. Then was its plant moved from Zanesville, Ohio, to another location?

A. To Evanston.

Q. Illinois?

A. Illinois.

Q. Have you any clear recollection as to when that removal took place?

3898 A. No. I couldn't say. I couldn't, but—I would have to hazard a pure guess. So I won't attempt it.

Q. Now, based on what you have now testified to, is it correct to say that when the Mark Manufacturing Company began producing conduit substantially all other production of rigid steel conduit was in or near Pittsburgh?

A. Yes. I would say every foot of it.

Q. With the possible exception of Clifton?

A. You said—you eliminated that. You said with the exception of what I testified to.

Q. I did not mean to say that.

A. Clifton did produce conduit outside of Pittsburgh, in Buffalo; but the bulk of the production was in Pittsburgh unquestionably.

Q. Now, in this period that we have been talking about—I mean, the period of the early development of the rigid conduit industry following 1897, on what basis of price was conduit sold, that is, whether on a delivered price or a F.O.B. mill price, or on some other basis?

A. You are speaking now of the earliest days?

Q. That is correct.

A. It was sold on a list and discount, F.O.B. mill, with a freight allowance, and shipments went forward freight collect.

Q. Speaking now of some of these earlier com-
3899 panies in the industry particularly Safety-Armorite Cable Company—

A. Conduit Company.

Q. —Safety Armorite Conduit Company, with which you were connected, and the National Metal Molding Company, what was the raw product—principal raw product from which they began the production of rigid conduit?

A. Wrought steel—

Mr. MacIntyre: I object to that as calling for a duplication of the record.

Trial Examiner Norwood: Objection overruled.

The Witness: Wrought steel pipe.

By Mr. Robison:

Q. From what company did Safety-Armorite Conduit Company buy its raw pipe in those earlier days?

A. National Tube Company.

Q. And was that company at that time a subsidiary of the United States Steel Corporation?

A. Yes. When the United States Steel was created the National Tube Company became a member—was a member of the steel company. It was an underlying company or subsidiary company.

Q. Do you know what was the source of standard pipe for National Metal Molding Company?

A. When they first began to operate they secured their pipe from Spang-Chalfont Company; later from the
3900 National Tube Company.

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Q. Were those two companies that I have last mentioned, namely, Safety-Armorite Conduit Company and the National Metal Molding Company the largest producers in the steel conduit industry—I have reference to the time around 1910 to 1915?

A. Yes.

Q. Now, at sometime between—within that five years I have just referred to, did a change take place on the part of these two companies in their method of carrying on their conduit business?

A. Yes.

Q. What was that change and when did it occur, if you can state?

A. It was in 1912, I am quite sure, that they became rigid conduit agents of the National Tube Company.

Q. And one of those companies was one of the companies with which you were then connected?

A. Yes, Safety-Armorite Conduit Company.

Q. Just what did you mean by saying they became conduit agents for National Tube Company? What did they do as such?

A. The National Tube Company furnished the raw pipe. Each of those companies converted it into conduit, finished it into rigid steel conduit. The pipe was sold and belonged to the National Tube Company.

Q. The selling was done by the two companies?

3901 A. The selling was done by the company that converted it.

Q. On what basis of compensation did they do the converting and selling? I do not mean in figures, but what was the general nature?

A. I cannot give it to you in figures.

Q. I do not mean in figures.

A. The conduit companies received a certain percentage of the proceeds as their compensation and to pay for the finishing.

Trial Examiner Norwood: The converting companies did the billing and collecting and so forth?

The Witness: Not at first. In the very early days of it they did the billing but the remittances went to National Tube Company. That was the very beginning, but that wasn't very successful. The converting companies didn't like that method; so later the proceeds came direct to the converting companies.

Mr. MacIntyre: I move that the question and answer dealing with the relationships of these two companies with the National Tube Company be stricken. They are irrelevant and immaterial to the issues in this case.

Trial Examiner Norwood: Motion denied.

I will say that I am receiving the evidence on counsel's promise to connect it up. If it is not connected, I will entertain a motion later on to strike.

3902 By Mr. Robison:

Q. How long did that method of doing business on the part of Safety-Armorite Conduit Company and the National Metal Molding Company continue?

A. Approximately five years.

Mr. MacIntyre: If Your Honor please, I object to further questions along the line, unless an offer of proof is made.

We will take a lot of time to go over the entire record to strike this material and I think it is not fair to all counsel unless an offer is made to show its connection.

Mr. Robison: This evidence is offered to show the origin of the basing point system in this industry and there will be a connection furnished. This is a preliminary questioning to lay the basis for that line of proof.

Mr. MacIntyre: There is too much detail being included as to the inner-company relationship rather than going to the pricing method.

Trial Examiner Norwood: You are touching on the trade method here and it seems to me that it is being connected or can be.

Objection overruled. Go ahead.

3903 By Mr. Robison:

Q. During the period from about 1897 until about 1912, when Safety-Armorite Conduit Company was buying its pipe from National Tube Company, what was the National Tube Company's method of publishing its prices for pipe?

A. They had a price system known as price cards, price card and discount. Understand—

Q. Yes.

A. Understand, I won't say that that went back to 1897. I don't know when—

Q. But at any rate you remember it was true for some period prior to 1912?

A. Oh, yes, unquestionably.
Q. Were those price cards changed from time to time?
A. They were.
Q. And as they were changed did the successive cards bear successive numbers to identify them?
A. Yes.
Q. I think you said that they published prices on a list and discount basis for standard pipe?
A. Their published cards showed the discount. They had a published price list also which was a separate thing. They had a price list and then they had their price cards.
Trial Examiner Norwood: Who began to number these cards?
3904 The Witness: National Tube Company, presumably they did.
Trial Examiner Norwood: They began it, and the others adopted their numbers later on?
The Witness: Yes.
Mr. Robison: Understand, Mr. Examiner, that we are speaking now about the price cards for standard pipe of the National Tube Company.
Trial Examiner Norwood: Yes.

By Mr. Robison:

Q. Did National Tube Company at that time use a basing point method of quoting prices for pipe?
Mr. MacIntyre: I object. It is irrelevant and immaterial as to why the steel industry is also using the basing point system of prices. That has been tried before in a previous case of the Commission and it is now pending in the courts for final adjudication, and it is most certainly improper to bring it into this case. We are trying the use of a basing point system by another industry, the Rigid Steel Company industry.
Trial Examiner Norwood: Objection overruled.
Go ahead.
Mr. Robison: Read the question.
Trial Examiner Norwood: Read the question, please.
(The question referred to was read by the Re-
3905 porter.)
The Witness: Yes.
Trial Examiner Norwood: What time was that?
The Witness: Previous to 1912.
I don't know how far back that would go previous to that time.

By Mr. Robison:

Q. What was the basing point—

A. Pittsburgh.

Q. —for pipe?

A. Pittsburgh.

Q. I show you a copy of a paper which has been introduced in evidence here as Respondent's Exhibit No. 128-A, B and C, and ask you whether you recognize that as something of which you have seen the original before?

(Handing witness paper.)

A. Yes.

Q. What do you recognize the paper to be?

A. The price card of the National Metal Molding Company.

Q. What is the number of it?

A. Price card No. 1 of August 1, 1913.

3906 Q. Can you tell us whether Safety-Armorite Conduit Company published its price card No. 1 at or about the same time?

A. At the same time.

Q. That is, these two companies that were converting and selling as agents for National Tube Company brought out their No. 1 price cards?

A. Those two companies brought out their cards on instructions from the National Tube Company.

Q. I understand that you do not know of the existence at the present time of any copy of the No. 1 card of Safety-Armorite Conduit Company?

A. I didn't catch that question.

Mr. Robison: Will you read it, please?

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: I think I can furnish you such a copy. I didn't know you wanted it.

By Mr. Robison:

Q. I wish I had known that you could. If you can find that and can do so, will you send a copy to me?

A. I will send it to you. I am quite sure I have a copy.

Mr. Robison: May I reserve the right to offer it in the absence of the witness?

Trial Examiner Norwood: Certainly.

3907 Mr. Robison: I ask that this be marked for identification.

(The document referred to was marked "Respondent's Exhibit No. 256-A, B, C and D" for identification.)

By Mr. Robison:

Q. Mr. Hodkinson, I show you a paper consisting of four pages or two sheets marked Respondent's Exhibit 256-A, B, C and D, and ask you to tell us what that paper is?

(Handing witness paper.)

A. This is M. B. Austin and Company's price card on rigid conduit.

Q. And on what name of rigid conduit?

A. On the name of the Safety-Armorite Conduit Company for whom Austin was an agent.

Mr. Robison: I offer that in evidence.

Mr. MacIntyre: Objected to as immaterial.

Trial Examiner Norwood: Objection overruled.

Received as marked.

RESPONDENT'S EXHIBIT NO. 256-A, B, C AND D was offered and received in evidence.

Mr. Robison: Mark this paper for identification, please.

(The document referred to was marked "Respondent's Exhibit 257-A, B, C and D" for identification.)

3908 By Mr. Robison:

Q. Now, Mr. Hodkinson, after Safety-Armorite Conduit Company and National Metal Molding Company brought out their price cards, No. 1, dated August 1, 1913, did other companies that were then engaged in the production of steel conduit, publish similar price cards?

A. They did, yes.

Q. I show you, then, a paper that has been marked Respondent's Exhibit for identification 257-A, B, C and D, and ask you whether that is such a price card published by the American Circular Loom Company?

(Handing witness paper.)

A. Yes. It is.

Q. Can you tell us approximately how long after August 1, 1913, the American Circular Loom Company published that card?

A. No. I couldn't tell you that; but it was subsequent

to the issuance by the Safety-Armorite, and National Metal Molding Company.

Q. And did it come to your attention at that time?

A. Oh, yes.

Q. That when published it was dated back to the same date as the cards of the other two companies?

A. Oh, yes.

Q. Do you recall whether price cards No. 1 were also published by still further companies?

3909 A. I think so. All companies that were in the business followed suit and sold conduit on the same basis.

Mr. Robison: I offer Exhibit 257-A to D in evidence.

Trial Examiner Norwood: Any objection?

Mr. MacIntyre: This is objected to as immaterial.

Trial Examiner Norwood: Received as marked.

Objection overruled.

COMMISSION'S EXHIBIT NO. 257-A, B, C and D was offered and received in evidence.

By Mr. Robison:

Q. Calling your attention again, Mr. Hodkinson, to Respondent's Exhibit 128-A, B and C, which you said was a copy of No. 1 price card of the National Metal Molding Company, I notice the term "Pittsburgh basing discounts" on the sheet marked 128-B.

Can you explain to us what was meant by the term "Pittsburgh basing discounts"?

A. That means the goods are sold F.O.B. Pittsburgh no matter from what destination they come.

Q. You mean from what destination they come?

A. Yes.

Q. What did you say?

A. Yes. No matter where they come from it is F.O.B. Pittsburgh. They might be shipped to California

3910 sold F. O. B. Pittsburgh.

Q. "From what destination they come", you mean from what point of origin?

A. Yes. I used the wrong word there.

Q. Now, will you continue?

A. They were sold F.O.B. Pittsburgh—let me see. You wanted to know just what Pittsburgh basing means?

Q. I want to know the meaning of the term "Pittsburgh basing discounts"?

A. They were the discount on the goods F.O.B. Pittsburgh. If the goods were shipped to another point, the discount was lowered a certain amount by the freight.

Q. Lowered by an amount that would correspond with the freight from Pittsburgh to the place of delivery?

A. To destination.

Trial Examiner Norwood: That is, if the freight were more to the given point than the freight from Pittsburgh to that point, then the discount would be the difference and you would allow it to the customer, is that right?

The Witness: No. They are all sold F.O.B. Pittsburgh, with the discounts lowered by the actual freight from Pittsburgh to destination of those goods. Get that?

Mr. Robison: To make that plain, as I understand it in the answer, Mr. Examiner, the discount was lowered by an amount corresponding to the freight; thereby the
3911 price was increased.

Trial Examiner Norwood: I see.

The Witness: In other words, the customer paid the freight.

By Mr. Robison:

Q. Do you know at whose direction that method of quoting prices as on the basis of Pittsburgh basing was put into effect in the No. 1 price cards—

Mr. MacIntyre: I object to that.

By Mr. Robison:

Q. —of Safety-Armorite Conduit Company and the National Metal Molding Company?

Mr. MacIntyre: I object to that. There has not been any foundation laid and all the time taken this morning has not indicated that this witness has any knowledge of this taking place.

Trial Examiner Norwood: Read the question.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: The objection is overruled. Answer the question.

The Witness: At the direction of the National Tube Company.

By Mr. Robison:

Q. When this method of quoting prices for con-
3912 duit was begun, was there a change made in the practice of those companies with reference to the payment of freight?

A. Oh, yes. Previous to that time freight—all shipments were made freight collect. Under this system, freight was always prepaid.

Trial Examiner Norwood: We will have a five-minute recess.

(A short recess was taken.)

Trial Examiner Norwood: Proceed.

By Mr. Robison:

Q. Referring again, Mr. Hodkinson, to the matter of basing point for standard pipe about which you have told us, was there another basing point for pipe in addition to Pittsburgh used at a later date than that which you referred to as around 1912?

A. Yes, Gary.

Q. Gary, Indiana?

A. Indiana.

Q. Can you tell us about when Gary began to be used as a basing point for pipe by the National Tube Company?

A. No. I couldn't give you the year of that, Mr. Robison.

Q. Is the fact that it began the use of that additional basing point associated in your mind with the decision of the Federal Trade Commission in what is commonly known as the Pittsburgh Plus case?

3913 Mr. MacIntyre: I object to the leading of the witness in that way.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: If we go into the last question and answer, we will see what the last question does.

(The question referred to was read by the Reporter.)

Mr. MacIntyre: It is objected to.

Trial Examiner Norwood: The counsel's point of leading is well taken, but I think it is harmless. I will overrule the objection.

Answer the question.

The Witness: It was subsequent to that decision.

By Mr. Robison:

Q. Do you recall whether or not it followed in point of time quite closely after the announcement of that decision?

A. Oh, yes. It was subsequent but immediate—in fact, the decision I think brought it on.

Mr. Robison: I will consent that that last statement go out as the witness's conclusion.

Mr. MacIntyre: I do not consent to it since the witness has made the entire statement. I intended that it remain on the record.

Mr. Robison: I am perfectly willing.

Trial Examiner Norwood: I think counsel started
3914 to object.

Mr. MacIntyre: I did intend to move that the witness not go into the matter further.

Trial Examiner Norwood: It remains on the record and everybody should be happy over the result.

By Mr. Robison:

Q. Do you recall whether or not in the prices of National Tube Company after it began using Gary as an additional basing point, there was a differential in its price for pipe as between Pittsburgh and Gary?

A. Yes.

Q. Do you recall what that difference was?

A. I do.

Q. What was it?

A. $4.00 a ton.

Q. Referring back to the earlier days of rigid conduit industry, I will say prior to 1912, was it the practice of your company to use a freight bulletin book in connection with its sales of rigid conduit?

A. No. We had no freight book.

Q. After your No. 1 price card came out announcing Pittsburgh basing discounts, did you then begin the use of a freight publication?

A. We used the freight publication of the National Tube Company on standard rigid pipe because the
3915 freight rates on conduit and rigid conduit were identical.

Q. Had the National Tube Company published such a freight bulletin some years prior to that?

A. They had a freight book out, yes.

Mr. Robison: I would like to have the last previous answer read.

Trial Examiner Norwood: Real the last previous answer.

(The answer referred to was read by the Reporter.)

By Mr. Robison:

Q. I think you want to make a correction of that answer, do you not?

You meant to refer to the freight rates of what as being identical?

A. The freight rates of the standard pipe and rigid conduit were identical. Is that what I said?

Q. I think you misspoke.

A. Well, that is what I meant.

Trial Examiner Norwood: By that you mean the pipe which is the raw material?

The Witness: Of standard pipe as raw pipe. I meant their standard pipe, meaning raw.

Trial Examiner Norwood: From which you make the steel conduit?

3916 The Witness: Yes.

By Mr. Robison:

Q. Do you recall, Mr. Hodkinson, what company that was a producer of rigid steel conduit first published a freight rate bulletin applicable to rigid conduit?

A. I believe Youngstown was the first to get that out.

Q. That is Youngstown Sheet & Tube Company?

A. Youngstown Sheet & Tube Company, yes.

Q. There has been referred to in this proceeding an association that was known as the Associated Manufacturers of Electrical Supplies.

Do you recall the formation of that Association?

A. I do. I helped in it.

Q. What is that?

A. I helped in it.

Q. You were one of those who was concerned with forming the Association?

A. Yes.

Q. Can you tell us about when it was formed?

A. I would say about '15 or '16, 1915 or 1916, approximately that.

Q. And at that time you were one of the officers of the Safety-Armorite Conduit Company?

A. Yes.

3918 By Mr. Robison:

Q. Mr. Hodkinson, state whether or not there was a merger in which the Association to which you have re-

ferred known as Associated Manufacturers of Electrical Supplies became merged into an association known as National Electrical Manufacturers Association?

A. There was such a merger, yes.

Q. Can you tell us about when that took place?

A. Oh, I would say in 1924 or thereabouts.

Q. And were you a member of both of these Associations—

A. Yes.

Q. —before and after the merger?

A. Yes.

Q. What were the nature of the activities of those Associations?

A. I would say it was made up almost completely of technical matters and work in connection with the interests of those types of goods that were associated in membership in the Association.

Q. Will you indicate to us in general what you mean by the term "technical matters"?

A. You are getting into a pretty involved subject. The electrical business of this country is largely con-
3919 trolled by what is known as the National Board of Fire Underwriters and also by what is known as the Electrical Committee. The Electrical Committee annually or every two years, I think, formulate rules which regulate the installation of anything electrical. It is for the safety of life and property.

Q. I want to interject a question at that point. When you said the electrical industry is largely controlled, did you mean as to standards and that sort of thing?

A. No, no. They don't attempt to control any individual industry as to the standards of that industry and its functions.

Q. What did you mean when you said the electrical business—

A. They control it in this way: they say that a certain type of installation is the minimum of safety; that is, you may put in a better installation if you wish, but nothing poorer than they require.

Trial Examiner Norwood: Specifications?

The Witness: Yes.

By Mr. Robison:

Q. And that is what you meant by what you said that the electrical industry was controlled?

A. Oh, yes. I should have said regulated.

Q. You did not have any reference to any financial connection?

3920 A. Absolutely no financial connection whatever.

Q. Will you continue to answer now sufficiently to indicate to us the general nature of the activities which you referred to as technical activities?

Mr. MacIntyre: I object to further details on this. The matters by which we are here concerned in the way of activities indulged in by these two Associations which were made up in large part, particularly the conduit section, by these respondents in this case, revolves about restraints of trade through those instrumentalities, that is, the Associations, as exposed by evidence already in the record.

Trial Examiner Norwood: Yes, but he is trying to tell you what these Associations do.

Mr. MacIntyre: Well, the other activities of the Associations, that is, luncheons they might have had or picnics are not relative to the issues in this case.

Trial Examiner Norwood: That is true with respect to some things, and it is not true with respect to others.

Objection overruled.

The Witness: Those Associations were made up of groups of manufacturers under what they termed sections. For instance, the rigid conduit section, there may be a wire section; there may be a box section, a fitting section, and so it goes all along the line of electrical materials.

3921 Those sections operate in the formulation of standard products, the individual section regulation as to what shall be the standard of their production. This is one of the many things now that the Association does. That standard, then, would have to go before the Board of Governors of the Association and for their approval. What I meant when I say they operate in technical matters, is that it is a purely technical matter.

By Mr. Robison:

Q. And changes in standards have to be cleared also with the representatives of the Fire Underwriters organization?

A. Oh, yes. Oh, yes.

Trial Examiner Norwood: I think we are going into—

Mr. Robison: I do not propose to pursue it further.

The Witness: It is a pretty involved matter.

By Mr. Robison:

Q. I just want to ask you questions further about these sections that you referred to.

I think you said there was in each of these Associations a rigid conduit section?

A. Yes.

Q. And did that section of each of those Associations have its own separate organization with a secretary and so on?

A. Yes.

3922 Q. As such sections, they kept minutes of their own proceedings?

A. Yes.

Q. I think it has been shown on the part of the Commission in this proceeding by an exhibit which was introduced that you were a member of the Board of Governors of the National Electrical Manufacturers Association in the years 1933 and 1934, or at least in a part of each of those years, is that right?

A. I was a member of the Board of Governors three or four years.

Q. Beginning in 1933?

A. I really can't tell you. I would say 1932, maybe 1931 or 1932—1932 anyway.

3923 Trial Examiner Norwood: Proceed.

Mr. Robison: I ask that these papers be marked for identification with separate exhibit numbers for each separate paper.

(The documents referred to were marked "Respondent's Exhibit 258-A and 258-B, 259-A and 259-B, 260-A and 260-B, 261-A, 261-B, 261-C, 261-D and 261-E, 262-A and 262-B, 263, 264, 265, 266-A and 266-B" for identification.)

Mr. Robison: I offer in evidence a certificate of W. J. Donald, managing director of National Electrical Manufacturers' Association, who has been a witness in this case, certifying to a copy of resolutions adopted by the Board of Governors of that Association on July 11, 1933, which have reference to approval of a basic code for the electrical manufacturing industry, for submission to the Presi-

dent under the National Industrial Recovery Act, marked for identification as Respondent's Exhibits 258-A and 258-B.

Trial Examiner Norwood: Any objections?

Mr. Robison: I also offer papers marked for identification as Exhibits 259-A and B, the first being Gov-
3924 ernment print of the Code of Fair Competition for the Electrical Manufacturing Industry as approved on August 4, 1933, and 259-A being an amendment to that Code, as approved on April 25, 1935.

Trial Examiner Norwood: Any objections?

Mr. MacIntyre: I would like to ask the witness one or two questions.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. You are a member of the board of governors of the National Electrical Manufacturers' Association at the time this resolution was adopted there, were you, Mr. Hodkinson?

A. I wouldn't say positively.

Q. Now, referring to this offer, Respondent's Exhibit 259, in so far as you can recall your membership in the board of governors and the action of it in submitting a Code or a draft of a Code to the Government officials for their consideration, would you say that the Code referred to in this Respondent's Exhibit 258 for identification is the one marked here as Respondent's Exhibit 259 for identification?

A. I would say, undoubtedly.

Mr. MacIntyre: I have no objection to those two exhibits.

Trial Examiner Norwood: They are received and marked Respondent's Exhibits 258-A and B, and 259-A and B.
3925 RESPONDENT'S EXHIBITS NOS. 258-A and B and 259-A and B, were offered and received in evidence.

Trial Examiner Norwood: 259-A is a bound pamphlet with numbered pages from 43 to 52, also the cover, and 259-B is a bound pamphlet with numbered pages from 1 to 3, inclusive, and also the cover.

Mr. Robison: I would like to have it understood, Mr. Examiner, that our offer of these papers 259-A and B include in each case the printed Executive order which is

included within the page numbers to which you have now referred.

Trial Examiner Norwood: Yes. It also includes the front pages and inside covers in each case.

Mr. Robison: I offer papers marked Respondent's Exhibit 260-A and B, being a certificate by the managing director of N. E. M. A., certifying to a copy of an extract of the minutes of a meeting of the Board of Governors of that Association on July 25th and 26th, 1933.

I also offer Exhibit 261-A, B, C, D and E, certifying to an extract from the minutes of a meeting of the Policy Division of that Association, held on September 26, 1933.

I also offer papers marked Respondent's Exhibit 262-A and B, in which the managing director certifies to an extract of the minutes of a meeting of the Board of Governors of that Association held on September 26, 1933.

3926 I also offer a paper marked for identification as Respondent's Exhibit 263, a further certificate of the same individual, certifying to an extract of the minutes of a meeting of the Board of Governors of that Association held on September 28, 1933.

I also offer a further paper marked Respondent's Exhibit 264 for identification, a similar certificate certifying to an extract of the minutes of a meeting of the Executive Committee of that Association on September 20, 1933.

Trial Examiner Norwood: Of how many sheets did Respondent's Exhibit 263 for identification consist?

Mr. Robison: A single sheet.

I also offer a further paper marked Respondent's Exhibit 265 for identification, a certificate of the same person certifying to an extract of the minutes of a meeting of the Executive Committee of that Association held on October 20, 1933.

I also offer papers marked for identification as Respondent's Exhibits 266-A and B, a further certificate of the same person, certifying to an extract of the minutes of a meeting of the Board of Governors of that Association held upon February 7, 1935.

Trial Examiner Norwood: Any objection?

Mr. MacIntyre: I offer no objection to these, subject, however, to a right to move to strike with the same

3927 force and effect as if it were stated as an objection to them at this time. If I desire to make such a motion at a later date, after I have had an opportunity to

check, and, of course, my waiver of objection at this time is with that understanding, and also with the understanding that the witness can give us explanations of these matters, as well as explanations which will be afforded to us otherwise by counsel for the respondents. All of this, of course, is included in my understanding of a waiver of objection to be made at a later time.

Trial Examiner Norwood: Counsel may move to strike at a later time.

Mr. MacIntyre: With the same force and effect as if the objection was stated at this time?

Trial Examiner Norwood: Yes.

The exhibits are received and marked.

RESPONDENT'S EXHIBITS NOS. 260-A and B, 261-A to E, 262-A and B, 263, 264, 265, 266-A and B, were offered and received in evidence.

By Mr. Robison:

Q. Mr. Hodkinson, I call your attention to papers introduced as Exhibit 261-C and D, which appear to be a bulletin stating the classification under the N. E. M. A. Code as determined by the Board of Governors of N. E. M. A. 3928 on September 26, 1933, and call your attention to the fact that one of those classifications is designated as the "Roughing-in Material Classification."

During the life of the N. E. M. A. Code, did you have something to do with what was known as the "Roughing-in Classification" under the Code?

A. Yes, sir.

Q. And as indicated by that paper rigid steel conduit was included in the "Roughing-in Material Classification," was it?

A. Yes, sir.

Q. The paper that has been introduced as Exhibit 263 shows the appointment of Mr. F. C. Hodkinson as temporary supervisory agency for the roughing-in material classification under the Code, the appointment to continue until final appointment was made.

Are you the same Mr. F. C. Hodkinson?

A. I am.

Q. Who acted in that capacity?

A. I am.

Q. And you did so act, did you?

A. I did so act.

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Q. By whom were you first asked to act as temporary supervisory agency for the "Roughing-in Material Classification"?

A. By the managing director, Mr. Berresford at that time.

Q. The respondent's Exhibit 265 shows the ap-
3929 pointment at a meeting of the Executive Committee of N. E. M. A. held on October 20, 1933, of Mr. F. C. Hodkinson as supervisory agency for the "Roughing-in Material Classification." That again refers to you?

A. Yes, sir; and I so acted.

Q. And from the time of that appointment as made, referring to the permanent appointment, as distinguished from the temporary appointment that was prior thereto, did you act as supervisory agency?

A. I did.

Q. Of that classification under that Code?

A. I did.

Q. Did you receive any compensation from anybody for your services as such supervisory agent?

A. None whatever.

Q. A witness who has been called in this proceeding by the Commissioner, Mr. T. H. Bibber, has stated that he was your secretary or assistant—I do not remember which term he used—in connection with your activities as supervisory agent.

A. He was my secretary.

Q. Where was the office located in which he carried on his activities?

A. At N. E. M. A. headquarters.

Q. And where was that?

3930 A. In the Commerce Building, 155 East 44th Street, I believe it is.

Q. In New York City?

A. In New York City.

Q. Where was your office at the time?

A. 245 East 42nd Street.

Q. Following the adoption of the resolution to which I have last called your attention, and which had to do with your appointment as supervisory agency of the "Roughing-in Materials" Classification, did you receive from the National Recovery Administration at Washington any paper with reference to your appointment as such supervisory agency?

Mr. MacIntyre: I object to any testimony concerning any documents, unless they are produced.

Mr. Robison: Unfortunately, I have to prove the inability to produce them, Mr. Examiner.

Trial Examiner Norwood: Objection overruled.

Mr. Robison: I am now trying to find out whether there was any such.

The Witness: I believe I had such a document appointing me as supervisory agency.

Mr. MacIntyre: I object to the statement made by the witness and move that it be stricken as to what the document did, unless we can—or at least what the effect of the document was, unless we can have it stated for
3931 the record what the wording of the document was, so that we may determine whether or not it had the effect which he has just stated it to have. In other words, we are interpreting here a document, without the document being produced.

Trial Examiner Norwood: Objection overruled.

He is describing the document.

By Mr. Robison:

Q. Have you recently searched among your papers to see whether you still have such a document?

A. Yes, sir.

Q. Have you succeeded in finding it?

A. I haven't found it.

Q. Your search has been thorough and complete?

A. Yes, sir, I think so.

Q. What is your recollection as to the wording of that document?

A. Well, I wouldn't assume to—

Q. I do not mean to ask you to repeat the exact words, but in substance, according to your recollection, what was the wording?

Mr. MacIntyre: I object to an attempt to interpret a document which is not here and offered in evidence.

Trial Examiner Norwood: He can give the substance of the contents of the document.

Mr. MacIntyre: I object to the attempt to do that.

3932 Trial Examiner Norwood: He can give the contents so far as he can literally, and if not, he may give the substance if he swears that that is correct.

Mr. MacIntyre: I object to any effort to interpret the

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significance of a document, through the guise of giving the so-called substance of it.

Trial Examiner Norwood: That may be well taken.

Objection overruled.

Mr. Robison: Will you read the question, please, Mr. Reporter?

Trial Examiner Norwood: Read the question.

(The question referred to was read by the Reporter.)

The Witness: Appointing me as supervisory agent of the "Roughing-in" Classification of the electrical manufacturing business, under the Electrical Manufacturing Code.

Trial Examiner Norwood: This document was issued by whom? By what authority was it issued?

The Witness: By the N. R. A. in Washington, it is my recollection.

May I say something off the record?

Trial Examiner Norwood: Did you act under that authority?

The Witness: Yes, sir.

Can I say something off the record?

3933 Trial Examiner Norwood: No. Just a minute.

Mr. Robison: By way of corroboration of the witness' last statement, Mr. Examiner, I offer in evidence a photostatic copy produced from the records of the National Recovery Administration, as now preserved in part in the building of the National Archives at Washington, entitled "Product Classifications of the Electrical Manufacturing Industry as set up for Code Administration under designated Supervisory Agencies, together with N. E. M. A. Sections, Groups, and Sub-Groups allocated thereto."

I am not interested in having the whole paper in evidence, unless Mr. MacIntyre requires that be all put in.

I would like to ask to read on the record a section of the paper which has reference to "Roughing-in Materials" Classification under the Code referred to in the heading which I have read.

Trial Examiner Norwood: The paper should be marked for identification.

Mr. Robison: Yes, sir.

(The document referred to was marked "Respondent's Exhibit No. 267" for identification.)

Mr. Gilpatric: May I state for the record, Mr. Examiner, that we caused to be made a thorough search of

the National Archives to see if we could find another copy of the certificate to which Mr. Hodkinson has re-
3934 ferred, and we are unable to find such a certificate in Washington.

The Witness: May I state what I was going to say off the record?

Trial Examiner Norwood: No. You had better wait until counsel is ready.

Mr. MacIntyre: I would object and do object, for that matter, to the reading of any portion of this document onto the record or the receipt of the document itself in evidence. There has been no foundation laid for it.

It has been submitted with the statement that it corroborates the witness in his interpretation of some document which has not been produced. This does not corroborate the witness in that direction; it merely shows that he was on a supervisory agency in the "Roughing-in" Classification. It does not show who put him there. It does not corroborate him in his conclusion that some one particular person appointed him. It just merely shows the fact that he was there. On the contrary, the documents which have been put in here previously this morning by the respondents are in contradiction of the witness' statements.

Mr. Robison: There is no contradiction whatever, Mr. Examiner, in the documents, as will appear from an examination of the proof itself.

Trial Examiner Norwood: They are in evidence.

Mr. Robison: The procedure as shown in the reso-
3935 lutions in the evidence, is in accordance with the provisions of the Code, which is also in evidence.

Trial Examiner Norwood: Is it important here who appointed this man on this body?

Mr. Robison: It is important in my opinion, Mr. Examiner, for this reason, that in the earlier stages of this proceeding the contention was repeatedly made that Mr. Hodkinson as supervisory agency under the Code was merely the agent of the members of the industry, and had no official standing whatsoever.

Our putting this in is the best evidence that we can produce from the very incomplete records that have been maintained following the termination of the N. R. A., as showing the recognition by the N. R. A. of his appointment to act in that capacity.

Mr. MacIntyre: The only thing that this Respondent's

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Exhibit 267 for identification shows, is that there was recognition somewhere, by someone, of the action taken by the respondents which is disclosed by Respondent's Exhibits 258 to 266 in naming Mr. Hodkinson as their agent, and suggesting that he be so recognized as their agent. That is all that goes to, and that is all that I have contended all along in these hearings.

Trial Examiner Norwood: They may show that, and then you may add to that some further information.

3936 Who appointed you? You spoke of this document, ment, that is the last.

The Witness: I think that document bore the President's signature, as well as Mr. Johnson's signature. It is my recollection.

Mr. MacIntyre: If Your Honor please, may I inquire as to why Respondent's counsel do not secure from the Archives that document, instead of the one they are now offering here?

Mr. Gilpatric: I already stated that we could not get it.

Mr. Robison: It is not available to us.

Trial Examiner Norwood: If he objects to reading from the record, you will have to offer it in evidence.

Mr. Robison: I offer the entire paper, Mr. Examiner.

Mr. MacIntyre: My objection goes to the whole paper, as well as any part of it.

Trial Examiner Norwood: The objection is overruled.

The exhibit is received and marked.

RESPONDENT'S EXHIBIT NO. 267 was offered and received in evidence.

Mr. Robison: That completes my direct examina-

3937 tion of the witness.

Trial Examiner Norwood: Cross-examine.

Mr. Houston: If Your Honor please, I would like to ask Mr. Hodkinson a question.

By Mr. Houston:

Q. Mr. Hodkinson, when did you leave the American Circular Loom Company?

A. At the end of 1936.

Q. Is that when the company was dissolved?

A. That is right.

Q. Have you had any connection with the conduit industry since that date, since the first of January, 1937?

A. Practically none. During the year 19—I think it was the year 1940—I was known as a special representa-

tive for a conduit company, Walker Brothers in New Jersey, for a period of six months.

Q. In that position with Walker Brothers did you have any control over the policies of Walker Brothers?

A. No. I had practically none whatever. It was simply a name.

Mr. Houston: That is all.

Trial Examiner Norwood: Any further questions?

(No response.)

Trial Examiner Norwood: Cross-examine.

3938 *Cross-Examination by Mr. MacIntyre.*

Q. Earlier this morning, Mr. Hodkinson, you testified, that it is talking about this provision that appears on Respondent's Exhibit 128-B, concerning the Pittsburgh basing discount, and you stated that that provision was stated there as it is because the product was sold F. O. B. Pittsburgh, irrespective of where the shipment originated, or, in other words, that the customer paid the freight from Pittsburgh irrespective of the origin of the shipment; do you recall that?

A. On the basis of Pittsburgh; yes, sir.

Q. And that means that at that time when the Clifton Company manufactured conduit in Buffalo, and sold it to a customer there, and handled it only from its plant in Buffalo to that customer in Buffalo, the customer paid the freight from Pittsburgh to Buffalo, in accordance with that provision that is set forth on Respondent's Exhibit 128-B; is that correct?

A. That is correct.

Q. And that is the way that the basing point system, in its provision for application of basing point prices F. O. B. Pittsburgh, plus freight therefrom, irrespective of the origin of the shipment, has operated ever since, so far as you know; isn't that correct?

A. So far as I know, yes. I am not familiar with the conduit business today.

Q. It was still operating that way when you sep-
3939 arated yourself from the conduit business?

A. Correct.

Q. And you stated that at the time these provisions came into effect, as was shown by—I mean, as are outlined on Respondent's Exhibit 128—to which Mr. Robison called

your attention, that they were then used by the National Metal Moldings Company and the Safety Armorite Company, as agents of the National Tube Company; do you recall that testimony of yours?

A. Yes, sir.

Q. And that is a fact, is it not?

A. That is a fact.

Q. And at that time the National Tube Company, as you have testified, was a wholly-owned subsidiary of the United States Steel Corporation?

A. Yes, sir.

Q. Now, can you tell us whether or not at that time, and just prior to that time, that the National Tube Company adopted the use of those methods, and instructed its agents to so use those methods, as a result of agreements which were discussed and entered into by officials of the United States Steel Corporation and its competitors at the so-called Gary dinners which were at that time being held in the steel industry?

A. I don't think it had the slightest connection.

3940 Mr. Stewart: I object to that. That is so obviously an improper inquiry, that I object to it as not proper cross-examination. He is inquiring as to hearsay. It is not shown that this man attended any Gary dinners.

Trial Examiner Norwood: He can find out, can he not?

Mr. Stewart: He has answered it, not the slightest connection.

Mr. MacIntyre: May we have the question read?

The witness has not answered the question yet.

Mr. Stewart: Yes, he did. He said it did not have the slightest connection.

Trial Examiner Norwood: Objection overruled.

By Mr. MacIntyre:

Q. What do you know about it, Mr. Hodkinson?

A. What do I know about Gary dinners?

Q. Yes.

A. Absolutely nothing, except that I had heard from time to time, rumors.

Q. But you are expressing yourself as to these practices not having any connection with those Gary dinners.

A. Not at all. I said that there was absolutely no connection between the Gary dinners and the instructions to issue a certain price list.

Q. That is from the National Tube Company?

A. Yes, sir.

3941 Q. You are asserting that there was no connection there?

A. That is my opinion.

3942 Q. Did you attend any of the Gary dinners?

A. No.

Q. Did you know yourself who did attend them?

A. No.

Q. Did you see reports made by the people who did attend them, as to what took place at them?

A. I simply heard rumors as to the Gary dinners. I couldn't tell you anything about them, Mr. MacIntyre.

Q. Did you see the reports made by those who did

3943 attend them?

A. No, certainly not.

Q. In other words, your company at that time, the Safety Armorite Company as an agent of the National Tube Company, a wholly owned subsidiary of the United States Steel Corporation, did not inform you as to what was behind the instructions that were given you at that time; is that correct?

A. No, certainly that is correct. We received instructions.

Q. But they did not tell you what was behind them, is that correct?

A. Why should they? Yes, that is correct. Why should they? We were only an agent, Mr. MacIntyre.

Q. And you have only given here this morning the end point result, and not the causation, is that correct, in your discussion of these prices back around 1912 and 1913?

A. I told you, Mr. MacIntyre, I testified that our company was an agent of the National Tube Company. Agents usually follow instructions, take instructions, they don't ask reasons why.

Q. Just theirs to do and die; is that correct?

A. Sure. We were an agent.

Q. There is nothing further that you can tell us as for the reasons for the instructions that you received at

3944 that time?

A. No.

Q. And as to the whys and wherefores of the methods that you were asked to use?

A. I can assume.

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Q. We do not want assumptions, we want any real facts that you may have.

A. Simply that we followed in the issuance of our price list, for example, something that the National Tube Company practiced in their own standard pipe business.

Q. But you do not know why they used or adopted it?

A. Certainly not.

Q. And can't you tell us here anything about that?

A. No.

Q. Now, referring to Respondents' Exhibit 256 and Respondents' Exhibit 257, can you explain to us why these two price cards of these two different companies, both bearing the same date, carry one of them a number of 33, and another the number 1?

A. I don't know why Austin would be dated 33, I can't tell you that.

Q. You do not know why?

A. No, I can't tell you that.

Q. At that time Austin was acting as an agent in the sale of merchandise manufactured by your company?

3945 A. No. Safety Armorite Company had its own sheet at that time.

Q. Do you know whether it bore the same number and date as the Austin Company's list?

A. At that date it didn't bear that number.

Q. What number did it bear?

A. I don't know. I would say that this was a copy of Safety Armorite's list.

Q. But that one that you published at the time carried a different number from the one the Austin Company carried?

A. It wouldn't be 33, I can assure you.

Q. You stated that the order of the Federal Trade Commission in its case against the United States Steel Corporation in the so-called "Pittsburgh plus" case forced the use of a Gary, Indiana, base.

A. I said that was my assumption.

Q. You just assumed that?

A. Why, sure; that was only an assumption.

Q. How did you come to assume that?

A. Well, that is an awful hard question to answer; simply the fact that the Gary base was put into effect subsequent to that. I would say there was a very close connection there then.

Q. In other words, the mere fact that on a particular date the industry started using a Gary, Indiana, base,
3946 and the further fact that an order to cease and desist by the Federal Trade Commission against the United States Steel Corporation led you to believe that the order itself forced—

A. I would say so, yes.

Q. Did you ever see the order, read it?

A. No. In papers at the time, yes, surely. I was very familiar with it at the time.

Q. And it was from what you saw, and the fact of these two dates, you would say it forced the use of the Gary, Indiana, base?

A. I don't know that I would say that it forced it. I would say that the tube company found it advisable to put in a Gary, Indiana, base.

Q. Well, can you see any connection between the advisability of its putting in the base and the cease and desist order of the Trade Commission?

A. I will have to ask that you repeat that question.

Trial Examiner Norwood: Read the question, please.

(The question referred to was read by the Reporter.)

The Witness: Oh, I couldn't say that I saw any—I would say that the tube company simply felt it advisable to put in a base in addition to the Pittsburgh base.

3947 Q. I am asking you whether or not you saw any connection.

A. That is what I am answering, that that was the case.

Q. There was a connection?

A. Yes, that is from my mind.

Q. Are you testifying today that there was a connection?

A. No, I am testifying as to what I might assume. I am not testifying to that point as to any direct connection. I may be entirely wrong in my assumption. I was in business, and business do try to think of those things, and do try to connect up results with causes.

Q. Do you also assume that this cease and desist order of the Federal Trade Commission in the so-called "Pittsburgh plus" case forced the use of a $4 differential between the Pittsburgh base and the newly established Gary base?

A. No.

Q. What reason can you advance here for the institu-

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tion of that $4 differential about which you testified on direct examination?

3948 The Witness: I could not answer that at all. I couldn't give any reason for a $4 differential. I simply knew it was a fact that there was a $4 differential, but why they put in a $4 differential I cannot answer that.

By Mr. MacIntyre:

Q. You also know that it was a fact that the $4 difference between the Pittsburgh base and the Gary, Indiana, base amounted to substantially, if not practically all of the freight difference between Pittsburgh and Gary,

3949 Indiana, at that time; is that correct?

A. Not all of it.

Q. I said substantially all; is that correct?

A. From three-fourths to four-fifths of it, yes.

Q. In other words, the sales in that territory on a basis of the Gary, Indiana base plus freight therefrom amounted to practically the same, or almost the same, as if the sale had been made on Pittsburgh plus freight from Pittsburgh, is not that correct?

A. Oh, I would say so.

Q. And continued that way as long as the $4 differential in those two territories remained between two bases in the respective territories; is that correct?

Mr. Robison: It is obviously not true unless freight rates remained the same. We have no evidence whether that is the case or not.

Mr. MacIntyre: I am asking his answer.

The Witness: There was no direct connection between this $4 differential and the freight rate. I say no direct connection, because there were varying figures. I stated that a while ago, that $4 made up from three-quarters to four-fifths of the freight.

By Mr. MacIntyre:

Q. How are you so positive on that particular point, Mr. Hodkinson, when you stated a few minutes ago

3950 that you knew of no reason why this differential was established?

A. I don't see any connection between my testimony before and what you are asking now, or what I am stating now.

Q. You are just assuming now, are you not?

A. No, I am not assuming, I am making a statement,

a very positive statement, that there was a freight differential of $4 a ton, and the freight rate was a varying factor, and at that time made up more than that $4. The $4 did not represent to the tube company the amount of freight from Pittsburgh to that territory; is that clear?

Q. Your best recollection on that is that it paid from three-quarters to four-fifths of the total amount; is that right?

A. I guess so, I do not recall the exact rate.

Q. By the three-quarters or the four-fifths, whatever the amount that it was, the customers in the Gary, Indiana, territory, did not get any benefit by way of the base being established there, did they, over and above what they would have had on the Pittsburgh base?

A. They got a $4 benefit; that is not correct, they got the difference between the $4 and the actual freight; they got some benefit.

Q. Whatever that was?

A. Whatever that was, which I said was three-fourths to four-fifths.

3951 Q. But they did not get the benefit that they would have if the base had been established on the same level as the Pittsburgh base; is that correct?

A. Well, I don't think your question is quite correct. State that again. You say that they didn't get the same benefit that they would have gotten if the Gary, Indiana, base had been the Pittsburgh base?

Trial Examiner Norwood: I think he put the facts in regard to that. I think you are straying beyond the bounds of the direct examination.

Mr. MacIntyre: Of course, the direct examination covered a few of these fragmentary facts. I want to get the reason now, so we can understand the facts.

Trial Examiner Norwood: I do not think he went into the reasons for these things at all. I may be wrong.

Mr. Stewart: It does seem to me that we are tying the Pittsburgh base here.

Trial Examiner Norwood: Bring out the facts about the history and the particulars about this pricing system.

Mr. MacIntyre: Still, if your Honor please, the mere statement that these things occurred, without showing the reasons for them, leaves us in the air, without the reasons.

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3952 Trial Examiner Norwood: You can introduce this man as your witness then, and show that, but you are cross-examining now, and you must base your cross-examination on the direct examination.

Mr. Stewart: At least to some extent.

Mr. MacIntyre: In other words, I cannot get from this man while on the stand the reasons for the things that he stated on direct examination, that he said he knew did happen. Is that correct? I cannot get them?

Trial Examiner Norwood: No, I do not think you can. They did not go into that. This is merely argument, anyway.

Mr. Robison: Absolutely.

Mr. MacIntyre: I will pass that phase of the examination at this time. However, I did not bring the history into this case.

Trial Examiner Norwood: You can take those factual matters and argue those same theories that you are arguing with this witness.

Mr. MacIntyre: I have to have some rebuttal on that.

Trial Examiner Norwood: Are you nearly through with this witness?

Mr. MacIntyre: No, I have further cross, further questions. I can go on for a little while longer before
3953 lunch.

Trial Examiner Norwood: We will recess to 1:30.

(Whereupon, at 12:30 p. m., a recess was taken until 1:30 p. m.)

3954 Afternoon Session.

1:30 p. m.

Trial Examiner Norwood: The proceeding will please come to order.

FRANK C. HODKINSON thereupon resumed the stand and testified further as follows:

Cross-Examination (Continued) by Mr. MacIntyre.

Q. Mr. Hodkinson, by how much is the weight of one hundred feet of ½ inch pipe increased through the addition of the heaviest coating of zinc to make galvanized conduit about which you know to have been shipped in regular course by any of these companies you testified about this morning?

A. I would say it is not increased at all because you first have to clean the pipe and you reduce the pipe very much in weight before you give it the final coating. It used to be about four pounds to one hundred feet of scale alone removed from the pipe.

Q. It is your testimony, then, that in taking the raw pipe, the weight of it in preparation of it for making conduit, it is reduced four pounds per hundred feet as a general rule in the scaling?

A. In the early days. I don't know what it is today.

3955 They are making cleaner pipe today than they used to. They used to make very dirty pipe. I would say two or three pounds today at the very least.

Q. Let us consider this as of the early days about which you were testifying this morning.

A. That would be about four pounds.

Q. Four pounds. What is the weight of zinc? What was that?

A. The weight of zinc, I don't know how much of the zinc would be added to a piece of pipe ten feet long, but I would guess at it. There is no dependence on the answer.

Q. Do you not have any knowledge—

A. I never had anything to do with hot galvanizing, Mr. MacIntyre. Our process of zincing was electro-galvan-

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izing. That is very little more than a wash coat. It wouldn't be a pound on a ten-foot length of pipe. Hot galvanizing I would say at least two pounds.

Q. Well, when you said that the scaling reduced the weight about four pounds, were you talking about a ten-foot length?

A. Oh, yes. I am talking about one hundred feet—four pounds to the hundred foot.

Q. And now you are talking about hot dipping of zinc adding one pound per ten feet?

A. I question that very much. I don't know. I have no knowledge on that, Mr. MacIntyre, so I can't testify on that.

3956 Q. You have no knowledge, then, as to whether or not finished conduit is heavier or lighter, galvanized inside and out, with zinc, then the raw pipe from which it was originally made?

A. You are speaking of hot galvanizing when you say galvanizing pipe?

Q. Yes, so-called hot dip?

A. I would say substantially the same; very little increase.

Q. Well, when you consider as much as three thousand feet of ½ inch, would you say that in that case it would make any difference in the total weight?

A. Very little.

Q. Well, what do you mean when you say "very little"?

A. I wouldn't estimate how much. I don't know. I won't testify; that is something that is pure guess work.

Q. Do you know whether or not officials of the National Tube Company had met with representatives of its competitors and agreed to use numbers on its price card such as it did use and such as it instructed its agent, your company, to use at the time that your company used numbers?

A. I have no knowledge whatever of that.

Q. You do not know whether or not officials of the National Tube Company met, discussed and agreed with representatives of its competitors to do that?

A. No knowledge on that whatever.

3957 Q. Do you have any other explanation behind the instructions of the National Tube Company to its agents to so use the cards and the numbers on the cards which it asked you to put on that?

A. I don't gather just what you are asking, Mr. MacIntyre.

Trial Examiner Norwood: Read the question.
Mr. MacIntyre: I will restate it, if I may.
Trial Examiner Norwood: All right.

By Mr. MacIntyre:

Q. Do you know why officials of the National Tube Company put numbers on its price cards?

A. Just as a matter of convenience, a matter of reference, if you want to call it that.

Q. Did they tell you that is why—

A. Of their cards? No. They didn't go out of the way to tell us about their business.

Q. How do you know that they put it on there for their convenience?

A. I am guessing. That is just common sense, Mr. MacIntyre, that they would put a number on for their convenience and the convenience of the trade.

Q. But they never told you why they did it?

A. Certainly not.

Q. Do you recall your testimony this morning to the effect that you helped in the organization—

3958 A. Yes.

Q. —of the Associated Manufacturers of Electrical Supplies?

A. Yes.

Q. How did you help in that formation of that organization?

A. I was one of about four, five or six men that met in the office of Mr. W. C. Robinson in the Fulton Building in Pittsburgh to discuss certain matters in connection with the electrical industry. There were Mr. Robinson, Mr. Corrigan, myself, a man by the name of Bishop with the Goodrich Wire Company, and Mr. Hunt Kraus of the Hunt, Kraus Company of Syracuse. I believe that is about all.

Q. Well,—

A. Let me finish my answer.

We decided that some association of electrical manufacturers, not necessarily in the same line of business, but in the electrical business, should be created in order to work together for the good of things electrical. Following that meeting, a meeting was called of all electrical manufacturers who would attend and they met at the Hotel Roosevelt here in New York. I attended that meeting.

You asked me in what way I attended to the formation of that. In that meeting the A. M. E. S. was formed.

Q. The W. C. Robinson that you just made reference to, is the W. C. Robinson who is now one of the managing officials of the National Electric Products Corpo-
3959 ration?

A. Yes.

Q. And you continued to attend meetings of that Association after it was organized until it became a part of the National Electrical Manufacturers Association?

A. That is right.

Q. And even after that, you continued to attend meetings of the National Electrical Manufacturers Association?

A. Oh, yes. I was a member of the Board of Governors there for three or four years.

Q. And the minutes of the meetings of the members of the Associated Manufacturers of Electrical Supplies and of the National Electrical Manufacturers Association, rigid steel conduit section, which are signed by you and by Mr. H. S. Walker, Mr. J. S. Patterson and Mr. Franz Nielson, as you have seen them, are records of what took place at those meetings, is that correct?

A. That is correct.

Q. In so far as they show what took place at those meetings?

A. Those minutes are what took place at those meetings.

Q. Is it your testimony, Mr. Hodkinson, that the matter of filing prices by members of the Association with some common agent in the Association and the dissemination of those prices by that agent to all in the industry, is that a technical matter?

A. No, I wouldn't say so.

3960 Q. How would you describe that as an activity of the Association?

Mr. Robison: I think it is immaterial and irrelevant, Mr. Examiner. I object to it on that ground.

Trial Examiner Norwood: Objection overruled.

By Mr. MacIntyre:

Q. Would you say that that was one of the commercial matters or activities as distinguished—

A. That unquestionably would be a commercial activity.

Q. —as distinguished from technical activity?

A. Technical activity.

Q. Would you also describe as a commercial activity the one of a secretary of an association in writing to members of the association and asking them to send to him the lists of their jobbers and people recognized by such members of the Association as jobbers of electrical supplies?

A. That would be a commercial matter; that is not technical.

Q. Would you also describe as a commercial activity as distinguished from technical activities one where the secretary of the Association or someone connected with the office of the secretary of the Association in investigating contracts entered into by various members of the Association?

A. That is purely commercial activity.

Q. Would you also describe as a commercial activity one which involves inquiries of—that is, by an asso-
3961 ciation official as to what prices the various members had sold their products?

A. That would be a commercial activity.

Q. And would you say the same thing with respect to inquiries as to what the members had submitted as bids under seal to public bodies?

A. I would say that is commercial.

Q. Do you recall Mr. H. S. Walker was also on the Board of Governors of the National Electrical Manufacturers Association at the time you were?

A. He was.

Q. And some officials of the National Electrical Products Corporation also was on the Board at that time?

A. Not to my recollection; I don't think there were.

Q. Do you recall whether or not there was also on the Board of Governors a representative of the General Electric Company at that time?

A. Yes, there was.

Q. Who was that?

A. O. A. Shreve.

Q. Mr. Hodkinson, I am calling your attention to the names John S. Tritle, Clarence L. Collens, Frank C. Jones, George W. Mason and Francis E. Neagle, as they appear in the last paragraph of Respondent's Exhibit 258-A and I will ask you to specify the names of the companies
3962 represented by those men, as far as you can.

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A. John S. Tritle is Westinghouse.

Q. Westinghouse?

A. Westinghouse Electrical Manufacturing Company.

Clarence L. Collens, he was from Cleveland; he was in the generator business or motors. I forget the name—Franklin I believe was the name of his company. I am not sure.

George W. Mason is a refrigerator man.

Q. You do not know the name of the company?

A. No. Francis E. Neagle is a very eminent counsel in the city of New York, and he is counsel for NEMA.

Q. What about Mr. Jones?

A. Frank C. Jones is president of the Okonite Wire Company.

Q. I am calling your attention to the name Shreve appearing in Respondent's Exhibit 251-A—

A. General Electric Company.

Q. He is the Mr. Shreve you mentioned a few minutes ago?

A. General Electric Company from Syracuse—I mean, from Schnectady.

By Mr. MacIntyre:

Q. Now, calling your attention to Respondent's Exhibit 262-A and particularly to the name of the Code 3963 Advisory Committee; that was one of the committees of the National Electrical Manufacturers Association, was it?

A. No. That was the Code Advisory Committee—I believe it was an underlying committee of the Board of Governors of the National Electrical Manufacturers Association.

Q. And who constituted that committee at that time?

A. I don't know. I don't recall; about five members, I beiieve—three or five.

Mr. MacIntyre: I would like to ask respondents' counsel if they will undertake to supply us with the names of the members of that committee as of September 26, 1933, with a showing for each name of the company represented by such person?

Mr. Robison: I know of no source from which that information can be obtained, Mr. Examiner, other than the records of the N. E. M. A. which are open to Mr. MacIntyre as far as I know they are to us. He has already sub-

poenaed the managing director on one occasion and had him testify. I should think I should not be expected to introduce the documents.

Mr. MacIntyre: I am only asking respondents' counsel for some explanatory note on an exhibit they put in this morning. I certainly think I am entitled to get that information. It is just as easy and probably easier for them to find out who were the members.

3964 Mr. Robison: If your Honor thinks it is advisable, we will do that.

Trial Examiner Norwood: Counsel ought to consult with each other. I cannot compel them to come to an agreement about it.

Mr. Robison: All right.

By Mr. MacIntyre:

Q. Can you specify, Mr. Hodkinson, the names of the executive committee of the National Electrical Manufacturers Association as it was constituted on October 20, 1933 and as referred to in Respondent's Exhibit 264?

A. I cannot. There are about twenty of them, I believe. I was one of them I think at that time.

Mr. MacIntyre: Will respondents' counsel undertake to supply us with a list of that committee as of that date and showing for each such member the name of the company represented by him?

Mr. Robison: I would make the same response to that inquiry, Mr. Examiner, as the prior inquiry. If it can be readily obtained, I shall be glad to be the medium to forward it.

Trial Examiner Norwood: That is for counsel to discuss amongst themselves and one who can procure it with the least effort will please procure it.

By Mr. MacIntyre:

3965 Q. Mr. Hodkinson, I show you Respondent's Exhibit 267 and ask you to state whether or not you know who prepared that?

(Handing witness paper.)

A. No. I don't know who prepared it. I can't say. I have seen it before; I have seen such classification, but I don't know who prepared it.

Q. You do not know the year it was prepared in the offices of the N. E. M. A. and submitted to Washington?

A. I don't know. I can't testify on that. I don't know.

Mr. MacIntyre: There is no showing in the record as to whether or not this respondent's Exhibit 267 was an enclosure with a piece of correspondence from the N. E. M. A. to the N. R. A. in Washington, and, therefore, as to who the author of it was and with such uncertainties concerning it in the record I ask that it be stricken and so move at this time.

Mr. Gilpatric: In answer to that, Mr. Examiner, that document, Exhibit 267, was obtained from the National Archives as being a copy of the record of the N. R. A. The respondents have no way of knowing how it arrived there. It was received from that source.

Trial Examiner Norwood: Is it disputed that this
3966 man was on that committee?

Mr. Robison: The exhibit shows that he was appointed Supervisory Agency, so-called, under the Code.

Trial Examiner Norwood: I do not know that the paper adds anything to the oral evidence we have received here about his filling that position. I do not see it is important enough to have all this talk about.

Mr. Robison: What it shows or at least tends to show, Mr. Examiner, is recognition by the N. R. A. of his appointment to the position I referred to.

Mr. MacIntyre: I submit it is incompetent to show that. It does not tend to do so, and if it is to be argued it does so show, it is incompetent for that showing.

Trial Examiner Norwood: I will reserve ruling. I want to study it a little more.

Mr. Robison: It seems to me that Mr. MacIntyre's objection goes to its weight, not to its admissibility.

Mr. MacIntyre: To its admissibility also.

By Mr. MacIntyre:

Q. Mr. Hodkinson, I call your attention to Respondent's Exhibit No. 266-A, and B.

I will ask you to state whether or not you have any knowledge of any action by the N. E. M. A. at any time in the appointment of anyone else other than the parties whose names appear on that document to be members of a
3967 supervisory agency in the administration of the Code for the electrical industry during the period of the National Recovery Administration?

Mr. Robison: May I have the question read, please?

Trial Examiner Norwood: Read it.

(The question referred to was read by the Reporter.)

Mr. Robison: I should like to be informed in order that I may know whether I should make any objection, as to whether the question includes appointment of supervisory agency or agencies for other classifications under the Code of the roughing-in materials classification.

Mr. MacIntyre: I will have it understood that the question is confined to that classification.

Mr. Austin: I would like to point out that that was not, as was stated, a Code for the electrical industry. I understand it is a Code for the electrical manufacturing case.

Mr. MacIntyre: I accept that further amendment.

The Witness: I do not believe at any other time there was any others appointed as supervisory agencies of the roughing-in classification and these two, Mr. Quinn and Mr. Thomas were added to the supervisory agency at my request because the burden of the job was rather heavy. I wanted somebody to share it, and there never was at
3968 any time additional members of the supervisory agency of the roughing-in classification.

By Mr. MacIntyre:

Q. Again calling your attention to Respondent's Exhibit 266-A and B, and Respondent's Exhibits 263 and 265, do you know of any action taken by the N. E. M. A. at any time in the naming, nominating or appointing of anyone to be members of the supervisory agencies or to constitute a supervisory agency in the roughing-in classification in connection with the administration of the Code for the electrical manufacturing industry during the period of the National Recovery Administration other than as there shown by that?

A. None; none other than those.

Mr. MacIntyre: That is all.

Redirect Examination.

Mr. Robison: I think I have just one question.

Trial Examiner Norwood: Yes.

By Mr. Robison:

Q. You recall, Mr. Hodkinson, being asked on cross-examination regarding the relative weight of standard pipe and of finished conduit?

A. Yes, I recall.

Q. In the process of buying standard pipe and converting it into conduit, is there any cutting or waste of the pipe?

A. In converting it to rigid conduit?

3969 Q. Yes.

A. There is.

Q. Does that result in part at least from the fact that the pipe comes in lengths other than the standard ten-foot weight—in other lengths than the standard ten-foot lengths of conduit?

A. That may be the case in some cases. Our own company purchased it in dead lengths so that there was no dead ends. They cut a length in half and it made two ten-foot pieces. When they speak of ten-foot, it is with the half length of it and the coupling included in the length. The pipe is not a ten-foot. There is waste in cutting and threading always. No pipe has been perfect enough to resist some opening in the welding, in the threading.

Trial Examiner Norwood: The addition of the coupler would more than compensate for the waste in the screw, of the threads?

The Witness: Yes.

Mr. Robison: That is all.

Trial Examiner Norwood: Thank you, Mr. Hodkinson.

(Witness excused.)

Trial Examiner Norwood: Next witness.

Mr. Austin: I will call Mr. Tolles.

3970 E. TOLLES, was thereupon called as a witness by the Respondent and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Austin.

Q. Mr. Tolles, your full name is on record in this case, is it not?

A. It is.

Q. What is your position in the National Electrical Wholesalers Association?

A. Managing director.

Q. How long have you been associated with the National Electrical Wholesalers Association?

A. Twenty-five years, twenty-six years I think to be exact.

Mr. Austin: If Your Honor please, for the record I think it will save time if I refer to the Association as the N. E. W. A.

By Mr. Austin:

Q. Will you briefly describe the history and general activities of the N. E. W. A.?

A. Its history would start according to the records back in 1908, when the Association, known as Electrical Supply Jobbers Association was formed. It continued under that name for a number of years and then without making any other change it did alter its name to the National Electrical Wholesalers Association. It is composed of electrical
3971 wholesalers throughout the United States and its functions—did you ask me for its activities?

3972 Q. What is the approximate membership of the Association?

A. A trifle over two hundred members, representing perhaps about five hundred houses.

Q. What do you mean when you say representing five hundred houses?

A. Well, I mean that some memberships have a number of houses located in different cities. We call a membership only the main house; the others are called branch memberships.

Q. You stated you have been associated with the N. E. W. A. for more than twenty-five years?

A. That is correct.

3975 By Mr. Austin:

Q. Mr. Tolles, I understood a previous answer of yours that your membership geographically was pretty well spread all over the country?

A. I think they have members in practically every state in the United States.

Q. Now, referring to the work of the commodity committees of the Association, will you describe briefly the committee work as it is carried on by NEWA?

A. The electrical wholesaler deals in a great many different lines of material. In order that those lines might be studied, it sets up committees called commodity committees to particularly study the problems that relate to the
3976 distribution of 18 or 20 different classifications of electrical material. The personnel of those commit-

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tees is made up of men who have expressed in writing a desire to serve on the committees and the appointment of the men on those committees is made by a committee known as the committee on committees, which endeavors to place on the various commodity committees men from different geographical sections in the United States and to place on those committees if possible those men who have expressed a desire to serve. These committees ordinarily meet twice a year. An agenda is prepared in advance of the topics that are to come before the committee and the committee then sits down and discusses such problems as may have arisen in the distribution of that product and sometimes they do and sometimes they do not prepare certain recommendations as regards the distribution of products.

After these committees have met—

Trial Examiner Norwood: I do not think you need to go into those details. Tell what the committees do generally.

The Witness: Perhaps I have answered the question now.

Trial Examiner Norwood: I think so.

By Mr. Austin:

Q. Mr. Tolles, have you attended in your period of 3977 experience with NEWA meetings of commodity committees fairly regularly?

A. I should say so, yes.

Q. As I understood your explanation, commodity committees are made up—the membership of the committees is made up solely of wholesalers?

A. Correct.

Q. Would the explanation you have given to the operation of the commodity committee apply to the conduit committee?

A. Yes, sir.

Q. Has, to your knowledge, the operation of the conduit committee been any different from that of other commodity committees?

A. It is not.

Q. Are manufacturers customarily invited to attend commodity committee meetings?

A. Customarily the committee meets and has a meeting of its own and after that meeting has been held manufacturers are invited to sit in at a conference with members of the committee.

Q. And what does the commodity committee do in the subsequent meeting with the manufacturers that you have described?

A. If they have made any recommendations in their committee meeting they tell the manufacturers what
3978 those recommendations are and get their reaction as to whether or not they believe that they are good or whether they could be put into effect.

Q. After that meeting is over, does the chairman of a commodity committee prepare a report?

A. Yes. He prepares a report in writing.

Q. Will you tell us what is done with that report after it has been prepared by the chairman?

A. After his report is prepared, if counsel finds nothing improper in that report, it is presented to the executive committee of the Association. The executive committee reviews the report and either accepts it or makes some suggestion of a change in it and it is then presented to the membership in an open meeting and they either accept or do not accept the report of the committee.

Q. After such report has been accepted through this line you have described, what is done with the report?

A. It is printed and sent to all members of the Association with the minutes of the meeting and it is sent to those manufacturers that have been in attendance at the conferences.

Q. Has it been your experience that manufacturers invited to attend commodity committee meetings always accept and attend?

A. No. It has not been my experience.

3979 Q. Are manufacturers and suppliers invited to attend semi-annual conventions of the NEWA?

A. Yes.

Q. I think you have pretty well described the reasons why manufacturers are invited to attend commodity committee meetings.

Can you think of anything to add to what you have already said?

A. Not at the moment.

3990 *Cross-Examination by Mr. MacIntyre.*

3992 A. I believe that recommendations of the conduit committee were presented to manufacturers of conduit at conferences such as I have previously described.

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Q. And those conferences involved the group meetings of the representatives of the Rigid Steel Conduit Association, is that correct?

A. I couldn't say as to that because I don't know who are the members of the Conduit Association but of various conduit manufacturers.

Q. That is, representatives of conduit manufacturers at least?

A. They were conduit manufacturers.

Q. And will you please tell us all that you can about the nature of those recommendations, that is, all that you recall concerning the nature of those recommendations?

Mr. Austin: If Your Honor please, is not that outside the scope of direct examination? This witness is not a respondent in this case. He has testified to a method of procedure. He has not testified as to what was recommended or why. We will come to that later but this, it seems to me, is not proper cross-examination.

Trial Examiner Norwood: Read the question.

Mr. Austin: He is asked to describe all the recommendations of the conduit committee. That is far beyond the scope of the direct.

3993 (The question referred to was read by the reporter.)

Mr. MacIntyre: One of the last questions asked this witness by Mr. Austin was whether or not the conduit committee ever made recommendations concerning the basing system.

Trial Examiner Norwood: I think so. Objection overruled. Answer the question.

The Witness: One of the recommendations made by the conduit committee to the conduit manufacturers, I believe on many occasions, was that consideration should be given to the elimination of black conduit and that only white type should be manufactured.

By Mr. MacIntyre:

Q. When you speak of black conduit you mean black enameled?

A. I mean enameled.

Q. And when you speak of white you speak of galvanized?

A. Yes.

Q. And when you spoke of the conduit committee in that

connection you were still referring to the conduit committee of the National Electrical Wholesalers Association?

A. That is it.

Q. And what other recommendations can you recall at this time?

3994 A. Well, I think that there were recommendations made to the conduit manufacturers as to the shipment of conduit, what was known as random lengths; that they wanted to have the lengths all run the same length rather than random lengths of conduit.

Q. That recommendation was made by the conduit committee of the NEWA?

A. That is my recollection.

Q. And what other recommendations can you recall?

A. I wouldn't attempt to recall any other recommendations without thinking more about it.

Q. In other words, your recollection is not clear as to the others?

A. No. It is not.

Q. It is your testimony that there were no others?

A. It is not.

Mr. MacIntyre: That is all.

Mr. Austin: That is all, Mr. Tolles.

Trial Examiner Norwood: I want to ask a question here. With respect to wholesalers—with respect to your membership, you have certain standards that they have to come up to in order to become members of your organization?

The Witness: Yes. We do.

Trial Examiner Norwood: What are the requirements?

The Witness: Under our by-laws the requirements
3995 are that a concern has to do a certain volume of business; that it has to carry a certain amount of stock in its warehouse and it has to have men—salesmen on the road, and that it has to publish a catalogue.

Trial Examiner Norwood: Well, is there a list of your membership available to manufacturers of conduit?

The Witness: Any manufacturer can get a copy by writing to us.

Trial Examiner Norwood: And determine who belongs to your Association, is that right?

The Witness: They would know from that who belonged.

Mr. Austin: May I ask a couple of questions now?

Trial Examiner Norwood: Yes.

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By Mr. Austin:

Q. Mr. Tolles, do you have special memberships in your Association?

A. We do.

Q. What are those memberships?

A. Those are memberships of concerns that wouldn't ordinarily qualify for membership under our by-laws.

Q. Does NEWA take any position to the effect that if a business does not qualify for membership in the Association it is therefore not an electrical wholesaler?

A. No, sir.

3996 Mr. Austin: That is all.

Mr. MacIntyre: I would like to ask the witness a question or two now.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Do you distribute, after you have published the same, the names of any wholesalers of electrical supplies other than those who have memberships, either general or special in your organization?

A. We do not.

Mr. MacIntyre: That is all.

Mr. Austin: May I ask one more question?

Trial Examiner Norwood: Yes.

By Mr. Austin:

Q. You stated that you will give anyone a list of your membership who requests that.

Do you distribute lists of your membership broadcast?

A. Not without a request.

By Mr. MacIntyre:

Q. You do know that manufacturers of conduit have secured your list of membership, do you, Mr. Tolles?

A. I don't of my own knowledge.

Q. What can you testify about from your records in that respect?

3997 A. Well, our files would show that. If they had written for a copy of a list of members of the Association it was undoubtedly sent. Without referring to the files I wouldn't be able to state.

Q. You have no recollection at this time?

A. No. I do not.

Trial Examiner Norwood: That is all.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

3998 ALFRED BYERS was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Austin.

Q. Mr. Byers, will you please tell us your present position?

A. Secretary of the National Electrical Wholesalers' Association.

Q. How long have you held your present position?

A. About five years and a half.

Q. Did you hold any position prior to that in the NEWA?

A. Yes, sir.

Q. What was it?

A. Assistant to the managing director.

Q. Will you describe very briefly your employment and experience before you became associated with NEWA?

A. Well, following discharge from the Army in the last war I was engaged by several manufacturing companies in auditing and accounting work, and also was comptroller. I was also engaged as the head of the accounting and statistical department of a trade association, National Trade Association; and then I came with this Association.

Q. Are you now in charge of the NEWA general office?

A. In the absence of the managing director.

3999 Q. How many employees does NEWA have?

A. Seven.

Q. Do you in your present position as secretary of the Association have control of the files, and a general knowledge of the correspondence of the Association?

A. Yes, I do.

Q. Prior to becoming secretary of the Association were you familiar with the files and the general correspondence of the Association?

A. Yes, sir.

Q. How often does NEWA have conventions, Mr. Byers?

A. We have them twice a year; but that is not a fixed rule.

Q. Are you in charge of the necessary preparations for such conventions?

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A. Yes, sir.

Q. You also arrange and prepare for commodity committee meetings held at Association conventions?

A. I beg your pardon.

Q. Do you arrange and prepare for commodity committee meetings held at the conventions?

A. Yes, I do.

Q. Do you prepare the agenda for the various commodity committee meetings?

A. Yes, sir.

4000 Q. Will you describe briefly how you prepare these agenda?

A. When a convention is about to take place, that is a few months perhaps in advance, we ask the members of the various committees whether or not they have any subjects they would like to suggest for consideration by the committees when they meet. I summarize any suggestions which are received, and, unfortunately, they are not very numerous, and I add to those suggestions any that may occur to me, so that perhaps an agenda for a committee meeting might be a little more interesting than if we relied solely on the number of suggestions received from the members of committees.

The tentative agenda is prepared and reviewed by counsel. After that procedure we distribute this tentative agenda to the members of the committee concerned.

Q. Do your answers with respect to commodity committees in general apply to the conduit committee in particular?

A. Yes, sir, but it is not in particular, that is no different than any other committee.

Q. Manufacturers and suppliers are invited to attend the meetings of commodity committees, are they not?

A. Yes, sir, they are.

Q. And commodity committees prepare reports, or the chairman of the commodity committee prepares a report of the meeting?

4001 A. He does.

Q. Will you describe briefly how you yourself collect and take care of those reports as they are prepared by the chairman?

A. Well, we request the chairmen of the various committees to come to a central room of the convention's headquarters, where we supply stenographic service, and they

do that, and they prepare written reports. I collect those reports and turn them over to counsel, who is there, and after counsel has looked over those reports I get them back from counsel.

Q. What do you do with them then?

A. Following that I am instructed to present them to the executive committee, who hold a meeting during the convention for the purpose of reviewing those commodity committee reports.

Q. Is it a practice of the Association, Mr. Byers, to hold a meeting of commodity committee chairmen before they meet with their committees on the days such meetings are held?

A. Yes, we have done that quite a bit.

Q. What is the purpose of that meeting?

A. Well, principally the purpose of the meeting is to make sure that the committee chairman, who it happens are changing from year to year, or every other year,
4002 at least, for the last couple of years—to be sure that they know exactly how committee work is carried on by the Association, and one of the things that we do at that meeting, which is a very, very short one, is to ask counsel to address the chairman of those committees, in order that they are properly informed as to the discussions that they can hold in their committee meetings, and also we use the meeting for the purpose of providing an opportunity to any chairman to ask any questions about procedure that he may care to.

Q. Do you as a general practice visit meetings of commodity committees to take the attendance?

A. Yes, sir.

Q. You are familiar with commodity committee reports as they appear in your publications?

A. Yes, I am.

Q. Would you state that the attendance of manufacturers, or the names of companies—manufacturing companies—listed in such reports is an accurate statement?

Mr. MacIntyre: Objection. There has been no foundation laid that would show that this witness is competent to testify on that point. He has merely said that he usually attends such meetings. He has not shown that he attended every meeting.

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Trial Examiner Norwood: He may show whether or not he checked this attendance, and just what meet-
4003 ings he attended for that purpose, and give us the particulars there.

Mr. MacIntyre: May we have the particular meetings specified, so that we know about which ones he is talking?

Mr. Austin: Strike out the question.

Trial Examiner Norwood: Go ahead.

By Mr. Austin:

Q. Do you, or does some employee of the NEWA, under your supervision, take attendance at all commodity committee meetings?

A. Yes, sir.

Trial Examiner Norwood: Does that include the attendance of the committee members and the attendance of manufacturers and suppliers?

The Witness: No, sir; it does not; our attendance records concern themselves solely with the members.

Trial Examiner Norwood: It does not record the presence of the suppliers?

The Witness: I beg your pardon?

Trial Examiner Norwood: It does not record the attendance of suppliers?

The Witness: No, the record we make for the purpose Mr. Austin refers to. However, there is a record of the attendance of suppliers, but that is a different rec-
4004 ord.

By Mr. Austin:

Q. Do you make in your attendance records a very careful check of the names of the members of NEWA who are there present?

A. Yes, we do.

Q. So that you can quite fairly state that you think those are accurate records as to the members of NEWA who are present?

A. Yes, sir.

Q. And now can you tell us how the attendance of manufacturers at those meetings is recorded?

A. Well, to the best of my knowledge, the chairman records the attendance during the course of the meeting, and when he prepares his report at the central headquarters, to which I referred, he at that time puts down the

names of those who are therefor the manufacturers, and I have no way of knowing anything about that.

Q. Mr. Byers, after the procedure that has been testified to has been gone through and commodity committee reports are printed, you then send them to the manufacturers who were present at the meetings?

A. Yes, sir.

Q. And you are responsible for sending them out?

A. Yes, sir.

4005 Q. Now, I would like you to look at Respondents' Exhibits for identification 269-A, through 269-G, and ask you if those are letters which you have written forwarding commodity committee reports to manufacturers?

Mr. Austin: At this time may I offer for identification all of these exhibits that have been marked by the reporter.

(The documents referred to were marked "Respondents' Exhibits 268, 269-A, B, C, D, E, F, G, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280-A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, Z-1, Z-2, Z-3, Z-4, Z-5, Z-6, Z-7, Z-8, Z-9, Z-10, Z-11, Z-12, Z-13, Z-14, Z-15, Z-16, Z-17, Z-18," for identification.)

Mr. Austin: May I have the question read?

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The record was read by the reporter.)

The Witness: Yes, sir.

By Mr. Austin:

Q. Covering what years are those letters?

4006 A. 1936, 1937, 1938, and 1939, to June, 1940.

Q. Are those the letters which you used in the transmittal of conduit committee reports?

A. Correction, please. I am sorry, Mr. Austin. To November, 1940—I am sorry again; I am in error; June, 1940 is correct.

Q. Are those the letters that you used in the transmittal of conduit committee reports during that period?

A. Yes, sir.

Mr. Austin: I offer those in evidence.

Trial Examiner Norwood: Are those all the letters that you used?

Mr. Austin: For that period of time.

The Witness: For that time, that is correct.

Mr. MacIntyre: May I have the witness' statement read back in which he stated what these are?

Trial Examiner Norwood: Read it.

(The record was read by the reporter.)

Mr. MacIntyre: I will ask the witness a question, if I may.

Trial Examiner Norwood: Go ahead.

4007 By Mr. MacIntyre:

Q. These letters, Mr. Byers, were addressed to various members and various manufacturers as those who were in attendance. In other words, they were form letters that were addressed to more than one person at each time?

A. Yes, sir; not to members.

Q. They were addressed to manufacturers?

A. Yes, sir.

Q. Various conduit manufacturers?

A. Yes, sir.

Q. Those were such concerns as Enamel Metals Company, National Products Corporation, and General Electric Company, and others who had representatives at these meetings?

A. Who were at the meetings, that is correct.

Mr. MacIntyre: I have no objection to the offer.

Trial Examiner Norwood: Received and mark in evidence.

RESPONDENTS' EXHIBITS NOS. 269-A to G were offered and received in evidence.

Trial Examiner Norwood: Do these indicate to whom each letter here was sent?

Mr. Austin: No, sir.

Trial Examiner Norwood: It was a form letter which you sent to many manufacturers at these particular
4008 dates, is that right?

The Witness: That is right, sir.

By Mr. Austin:

Q. Mr. Byers, you testified that you sent commodity committee reports to manufacturers present at the meetings, and you just identified and we have placed in evidence the form letters you used to send commodity committee reports to manufacturers. Now, is there any difference between the form of letter you used to send, let us say, a refrigeration commodity committee report, to the

refrigeration manufacturers, and a conduit committee report, to the conduit manufacturers?

A. The letters of transmittal are identical.

Q. Yes. After that commodity committee report is sent out with these letters of transmittal, what action is taken by the Association with respect to the recommendations contained in the commodity committee reports?

A. What action is taken by the Association, do you say?

Q. By the Association.

A. Well, so far as I know no action is taken by this Association.

Q. Mr. Byers, are you familiar with the complaint in this matter and the individual Respondents named in the complaint as members of NEWA's conduit committee?

A. Yes, I am.

4009 Q. Did you prepare at my request a memorandum showing the names of individual Respondents named in the complaint as members of the conduit committee, and the years in which the said individuals served on NEWA's conduit committee?

A. Yes, I did.

Q. I show you Respondents' Exhibit for identification 270, and ask you if that is the memorandum?

A. Yes, it is the memorandum.

Q. Now, that shows, Mr. Byers, the name of each individual Respondent named in the complaint as a member of the conduit committee, and it shows the years from 1936 to date when he served on the committee; is that correct?

A. That is correct.

Mr. Austin: I offer that in evidence.

Mr. MacIntyre: May I ask the witness a question about it?

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. You prepared this for use in this case, did you, Mr. Byers?

A. I prepared it for the use of Mr. Austin. I assume that is what he wanted it for.

Q. You understood it was for use in this case, when you prepared it?

A. I did.

4010 Q. As a matter of defense?

A. Yes sir. Well, I don't know whether it was defense. I just was asked to prepare the list and I did.

Q. Do you have any independent recollection as to the matters which are contained in this memorandum?

A. As to the matters contained in there?

Q. Yes.

A. Well, I know that it is simply a calendar list of the service of members of the conduit committee; that is all the list is supposed to be.

Trial Examiner Norwood: That is taken from the records?

The Witness: Yes, sir.

Trial Examiner Norwood: You testify to its accuracy?

The Witness: Yes, sir; I do.

By Mr. MacIntyre:

Q. And those records are available to us if we care to check them at any time?

A. Yes, sir.

Mr. MacIntyre: I have no objection.

Trial Examiner Norwood: Received and marked in evidence.

RESPONDENTS' EXHIBIT NO. 270 was offered 4011 and received in evidence.

By Mr. Austin:

Q. Mr. Byers, you have stated that during the entire period of your employment with NEWA you have been familiar with the files of the Association, and ever since May of 1936, or approximately that time, when you became secretary of the Association, you had charge of the files, is that correct?

A. Yes, sir, in the absence of Mr. Tolles.

Q. During the period of your employment has NEWA prepared cost surveys covering wholesaling costs on lines of commodities handled by electrical wholesalers?

A. Yes, sir.

Q. Has it been your duty to assist NEWA's operating cost committee in the preparation of such cost surveys?

A. Yes, it has.

Q. Based on your knowledge and experience, can you state whether an Association called the Electrical Supply Jobbers' Association was a predecessor of the present Association, National Electrical Wholesalers' Association?

A. Yes, it was.

Q. Was it the same Association?

A. Yes.

Q. I hand you Respondents' Exhibit for identification 271, and ask if this document was secured by you
4012 from the files of NEWA?

A. Yes, it was.

Q. To your personal knowledge, has it been in your custody, as secretary of the Association, since the time you have assumed that office?

A. Yes, sir.

Q. Will you tell us what it is, please?

A. It is a report of the operating expenses by commodities for five electrical jobbing houses for the calendar year 1921.

Q. Would you have any personal knowledge as to whether or not the electrical supply jobbers' association paid for this cost survey, Mr. Byers?

A. I wouldn't have personal knowledge, Mr. Austin, except it has come to me through the knowledge imparted to me by my superior.

Q. I notice on the face of that that it is called a report of operating expenses by commodities for five electrical jobbing houses. Are you able to tell us the names of those five houses?

A. No, I don't think I could.

Q. Mr. Byers, does this show cost figures for rigid conduit? I call your attention to page 16.

A. Yes, sir.

Q. Will you describe insofar as you are able what
4013 the figures shown in that report purport to be.

Mr. Austin: May I strike that question?

Trial Examiner Norwood: All right.

By Mr. Austin:

Q. Mr. Byers, does that report purport to show the average overhead cost of various expenses of electrical wholesalers in the distribution of commodities?

Mr. MacIntyre: I object to the question. The witness has no way of telling us any more than the document can tell us on that point. He found it in the files of the Association; we can tell what it purports to show as well as the witness.

Trial Examiner Norwood: I think the paper will speak for itself in that respect.

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Mr. Austin: I am willing to withdraw the question. I will point out that Mr. Byers has testified that his previous employment experience since 1918, has been in statistical and accounting work, and therefore he is particularly able, far better than Mr. MacIntyre or myself, to tell what a statistical report purports to show. If Mr. MacIntyre wants to rely on what he finds in it that is all right with me. I withdraw the question.

Mr. MacIntyre: I think if that document is admissible, I would as soon rely on the document.

Trial Examiner Norwood: Objection sustained.

4014 Mr. Austin: I will offer that in evidence.

Mr. MacIntyre: If this document is to be accepted only for showing what was done in the preparation, publication, distribution and use made by it, I would have no objection to it, but I do object to the document as being incompetent in an effort to show that any of the figures, or for that matter the accuracy of any of the figures or the propriety of any of the methods outlined in it. It would be incompetent for the purpose of showing that.

Mr. Austin: If your Honor please, I am far more interested in showing by the introduction of this evidence the course of NEWA's procedure with respect to cost surveys. I would like to have it admitted for the purpose of showing what was before members of this Association and its committees in the way of cost figures. Now, whether a particular figure is 28 per cent or 24 per cent, and that is correct, I am not inclined to argue about, but I do want it admitted for the purpose of showing that members of this Association, in good faith, with a reputable public accountant, had found that the cost was 28 per cent.

Trial Examiner Norwood: You do not offer it to show what the costs were?

Mr. Austin: I am not going to claim at any time that a figure in there is 100 per cent accurate. I may claim a member of this Association had this figure before
4015 him, and believed it was accurate, which is a very different thing.

Trial Examiner Norwood: I think that comes within Mr. MacIntyre's statement.

Mr. MacIntyre: I would object to it if it is received for the purpose of showing the propriety of any of the suggestions contained therein as to accounting theory or accounting practice or accounting results obtained.

Trial Examiner Norwood: It is simply to show that that was what they received and considered, as I understand it.

Mr. MacIntyre: I would have no objection if it is received for that.

Mr. Austin: It is not received only for that; it is received for the purpose of showing the practice and procedure of the Association as well.

Mr. MacIntyre: In the handling of the preparation?

Mr. Austin: That is right.

Mr. MacIntyre: Your Honor, I would have no objection to it on that score. My objection is as to the accuracy or propriety of it.

Mr. Austin: We agree to that.

Trial Examiner Norwood: As so conditioned the document heretofore marked Respondents' Exhibit No. 271 for identification, consisting of four cover pages and 19 numbered pages is received in evidence.

4016

RESPONDENTS' EXHIBIT NO. 271 was offered and received in evidence.

By Mr. Austin:

Q. Mr. Byers, I would like you to look at the Respondents' Exhibit for identification 274, and tell me if that was published by NEWA during the period of your employment by NEWA?

A. Yes, it was.

4017

Q. You secured it from the files of the Association?

A. Yes, sir.

Q. And you gave it to me?

A. Yes, sir.

Q. Will you describe what it is, please?

A. Well, officially it is known as "Information Bulletin No. 598", and the contents of the bulletin are the script of a playlet entitled "Back to Profits". The playlet was presented in 1931, in Cincinnati, in conjunction with one of our conventions, and was a regular convention feature.

Q. Were you present at the Cincinnati convention?

A. Yes, sir, I was.

Q. Can you tell me from your personal knowledge what committee of the Association prepared and presented the playlet of which this is the script?

A. The operating costs committee.

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4019 By Mr. Austin:

Q. Mr. Byers, you have stated that as one of your duties you assist the operating cost committee of NEWA to prepare the cost surveys; is that correct?

A. Yes, sir.

Q. Was a cost survey covering various lines of commodities handled by electrical wholesalers prepared in the year 1933 covering figures collected for the distribution of merchandise in the year 1932?

4020 A. Yes, sir.

Q. I hand you Respondents' Exhibit for identification 272 and ask you if that is the report of the operating cost committee of NEWA dated 1933, which you have described?

A. Yes, it is.

Q. Does this report contain figures covering the sale and distribution of rigid steel conduit?

A. Covering the sale and distribution?

Q. Covering the cost of distribution of rigid steel conduit?

A. Yes, sir.

Mr. Austin: I offer it in evidence.

Trial Examiner Norwood: Off the record.

(There was a short discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. MacIntyre: If this document is offered for the purpose of showing what the costs of any one or any group of people are, or for the purpose of showing that the method used in computing and compiling the purported costs which appear herein, then I would object to that, because I do not believe any of the statements contained therein as to the methods used, sources of the material, or the accuracy of the material itself should be received in evidence here, but if it is merely for the purpose of showing that a cost operating committee report was

4021 submitted to the National Electrical Wholesalers' Association on July 31st, 1933, by an operating cost committee of that Association, that consists of W. B. DeForest and W. O. Ramsburg of the Graybar Electric Company, Mr. W. M. Dick and Mr. Walter Williamson of the Westinghouse Electric Supply Company, and Mr. J. G. Johannesen and L. M. Nichols of the General Electric Supply Corporation, I can stipulate that fact that they did submit at that time a report of that operating cost committee of that Association.

Mr. Austin: Now, if your Honor please, in the first place Mr. MacIntyre has neither stated an objection—

Mr. MacIntyre: (Interposing.) Well, I do object.

Trial Examiner Norwood: Do you object?

Mr. MacIntyre: I object to the document itself, however; it is incompetent.

Trial Examiner Norwood: Unless it is received merely to show the fact that they did have a survey made and did have a report made to them to determine their costs?

Mr. MacIntyre: I agree that a survey was made, and that a report was made by the gentlemen that I have just named as constituting that committee of that Association, and that report was made on July 31, 1933. That is all I agree to, and I object to the document as incompetent.

Mr. Austin: Now, if your Honor please, that docu-
4022 ment is just about as competent and material and relevant evidence as could be offered in this case. Mr. MacIntyre in Chicago, through one of his investigators, in a back-handed way, which none of us liked, put in what he alleged were admissions of these Respondents, to the effect that a cost survey was prepared by three manufacturers for the purpose of fixing resale prices; that is a correct statement of the record and his case, and I am entitled to put this in to refute that, as long as my evidence is material.

Now, this is material for this reason, that it is prepared four years prior to the meeting at the Biltmore which has been in evidence so much here. It was not prepared by three manufacturers, as shown on the face of it; it contains figures with respect to conduit which I will prove are accurate; which I will in fact prove are accepted and approved and enthusiastically endorsed by the United States Department of Commerce for the finest method of determining wholesaling costs that it has seen to date, and that report is this one which I am going to offer in evidence and dated 1939.

Furthermore, the figures with respect to conduit shown in this report of 1933, based on figures of 1932, are the same figures that appear in Mr. MacIntyre's Exhibit 11, page
5, which he claims are the nefarious figures which
4023 were prepared by manufacturers for wholesalers, so that the admission of this in evidence definitely negates at least three of the inferences that he has tried to get into his case against us.

I cannot think of anything more material.

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Mr. MacIntyre: If your Honor please, Mr. Austin cannot properly take his Respondents' Exhibit 279 for identification, an incompetent document, and prove the competence of any one of his documents for identification, namely Respondents' 272 for identification, because the contents of neither have been proved.

Trial Examiner Norwood: Was the exhibit to which he refers admitted by agreement, or was it admitted with qualifications?

Mr. Austin: Which document is he referring to, this one?

Trial Examiner Norwood: The one that you referred to there as the one the Commission has introduced.

Mr. Austin: The one the Commission introduced was introduced over my objection.

Trial Examiner Norwood: As I understand it was conditioned, the receipt of it was conditioned. It was offered to show that the Respondents did at one time cooperate in producing some cost figures which they received, and which they urged, I think, on the manufacturers. Now, if
4024 this is part of that picture it might come in on the same conditions, to show what they did, and not to show what those costs were. Now, I have received more than one cost survey, and we have always received that with the testimony of the public accountant who made it, that he could be cross-examined, and that he could explain the items.

Now, if this is put in to establish what those costs are, I will sustain the objection.

Mr. Austin: If your Honor please, I would like to explain my position.

Trial Examiner Norwood: Yes.

Mr. Austin: I was trying to make here a presentation of the wholesalers' case as brief and as expeditious as possible.

I am calling as my next witness the chairman of the operating cost committee, who prepared this material, and I am presenting later, as an expert witness, the chairman of the sub-committee of the operating cost committee who prepared not only this survey but the next survey which I intend to offer in evidence.

Now, what their testimony is getting at is to show that the methods used in the preparation of these surveys were methods endorsed and in fact recommended by The Depart-

ment of Commerce of the United States. They will be subject to cross-examination, as much as Mr. MacIntyre
4025 wants, as to how the facts were secured and put together that resulted in these.

I have no interest, as I have stated before, in arguing that a percentage figure is an accurate figure. I am interested in having this in evidence to show that on a given date in, for instance, 1932, an attempt to honestly figure costs was made.

Obviously, I can and will argue that if figures made in 1932 were presented to manufacturers in 1937 there could be very little real attempt to fix prices based on costs shown therein, because they are five years out of date; therefore, I must have that in evidence to show that the figures in this report applying to conduit are the same as the figures that Mr. MacIntyre offered. I think that should be admitted with the old qualification he has as to the accuracy of the figures shown therein. I will make no claim now as to that, and I will do that by subsequent figures.

Trial Examiner Norwood: I do not think that the accuracy of those figures is in issue here. The only thing that touches this case is as to whether or not this is a bona fide effort to determine costs which they disseminated, as it is claimed they have a right to disseminate among their members for their independent use. Now, you may show that, but to go into what the costs are I am going to exclude that.

4026 Mr. Austin: I am not going to argue that, but I do want them in for the purpose of showing the costs before my clients in 1933 that they believed were accurate, whether they were or not.

Mr. MacIntyre: I want to point out, that I have never offered in evidence and there has never been received in this case an exhibit which was any operating cost committee report of costs, except this one offered by the Respondents here this afternoon.

I think that there is confusion here on the point that I have offered one report and they are offering others. I have not offered any operating cost committee reports at any time.

Trial Examiner Norwood: Did not those minutes contain some tabulation as to cost that were reported to the meeting?

Mr. MacIntyre: I offered statements in minutes of

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meetings showing that there were certain committees of this Association, and one of the committees was an operating cost committee.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: That was included along with other information concerning the operation of other committees.

Trial Examiner Norwood: Did you not though
4027 produce and have received one of their reports containing the figures?

Mr. MacIntyre: I do not recall having offered any report of an operating cost committee containing any figures.

Mr. Austin: Mr. Examiner, may I make a statement here now, and without any intention to be other than fair about this?

Trial Examiner Norwood: Yes.

Mr. Austin: Mr. MacIntyre has said that there is confusion here about what he has offered; if there is confusion, it is confusion created by him; and I believe intentionally. He felt that he introduced a case here against my client, and, as I probably would have, put in certain documents, which I could not determine the accuracy of, about which I knew nothing, that contained figures allegedly coming from my clients.

He did not put in any evidence as to when those figures were prepared by my clients; he left all of the wrong inferences to be drawn.

Further than that he had identified and authenticated by me a cost setup, which I am going to offer into evidence, which he failed to offer in evidence.

I say that, plus all I have said so far, this is of the most vital interest to my clients, because this is the
4028 report that according to Mr. MacIntyre's testimony was prepared by three manufacturers for NEWA, because NEWA could not afford to pay for it.

Trial Examiner Norwood: The stipulation that you offered to make there contained other claims, and it seems to me this offer covers all that is relevant.

Mr. Austin: No, sir, I do not like to be insistent, or to take up your time, but I will not accept Mr. MacIntyre's offer.

I will argue, and keep on arguing as long as you will permit me, that this is relevant and material and should be admitted into evidence, and if it is not my clients have been denied a right to deny by absolute proof four infer-

ences in the Government's case, as to which it has no evidence.

4029 Trial Examiner Norwood: I think that this might be received and considered only to show the good faith of your Association in having a cost survey, and to show the nature of that cost survey, without regard to whether it is legal or illegal; as so conditioned I shall overrule the objection and receive it in evidence.

Mr. MacIntyre: If Your Honor please, I offered to stipulate the date of this report, and I want to ask whether or not this report is now being received in evidence for a showing of the truthfulness of the statements contained throughout the report of the committee at the time it transmitted and submitted the report and the figures contained in the report itself.

Trial Examiner Norwood: Only as bearing on the good faith of their activities.

Mr. Austin: If Your Honor please, I have already stated that I am not now offering this for the accuracy of the figures shown therein. I intend to put on witnesses, subject to cross-examination, with respect to those, at which time Mr. MacIntyre can take all the time he wants to try to prove or disprove their accuracy.

Trial Examiner Norwood: I will add that as a further condition to the receipt.

Mr. MacIntyre: Mr. Austin says he is not offering it for the truthfulness of the figures, but there are many

4030 statements in the records in various statements throughout the report concerning methods of accounting, both as to theory and practice, and I do not think that as to the accuracy of those and the propriety of them that this report should be taken to prove it.

Trial Examiner Norwood: I have already stated that they are not received for the accuracy of those statements, only that they bear on the good faith of the people.

Mr. Austin: The Commission has a chief economist, and a whole staff of them, who can tell the Commission whether or not it is good theory.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

The Respondents' Exhibit 272 for identification is received in evidence as Respondents' Exhibit 272-A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X,

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Y, Z, and Z-1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25.

RESPONDENT'S EXHIBITS NOS. 272-A through Z and Z-1 through Z-25, were offered and received in evidence.

Trial Examiner Norwood: They are received in evidence subject to the conditions as heretofore stated.

Mr. MacIntyre: I believe the record already shows
4031 my objection to it, even with the conditions.

Trial Examiner Norwood: Yes.

Go ahead.

By Mr. Austin:

Q. Mr. Byers, after the operating cost committee's cost survey of 1933, when was the next cost survey prepared?

A. 1937.

Q. Were you also as one of your duties assisting the operating cost committee in 1937 in the preparation of that survey?

A. I assisted it, yes.

Mr. Austin: May I go off the record?

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

By Mr. Austin:

Q. Mr. Byers, is this the cost survey of 1937 that you described (indicating)?

A. Yes, it is.

Trial Examiner Norwood: How is that numbered?

Mr. Austin: Respondents' Exhibit for identification 275.

Trial Examiner Norwood: Go ahead.

By Mr. Austin:

4032 Q. Mr. Byers, was a cost survey with respect to the cost of distributing clocks and heating devices made by the Association's operating cost committee in 1939?

A. Yes, it was.

Q. I show you Respondents' Exhibit for identification 276 and call your attention to page 77 and following, and ask you if that is the report that you described?

A. Yes, it is.

Q. Mr. Byers, was a report of the operating cost committee in 1940 prepared and reported to the Association in 1941 relating to the cost of handling domestic major appliances?

A. Yes, it was.

Q. I hand you Respondents' Exhibit 277 and ask if that is the report you described?

A. It is.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

The Witness: It is.

By Mr. Austin:

Q. That is the report?

A. It is.

Q. Mr. Byers, the Respondents' Exhibits for identification 276 and 277, which you just identified as surveys relating to the costs of handling clocks and heating devices and the other domestic major appliances, were these
4033 as broad or all inclusive surveys as the surveys made in 1933 and 1937?

A. As respects those individual commodities, I think so, yes.

Q. But they did cover as many lines of commodities as did the surveys of 1933 and 1937?

A. Obviously not; they are just the designated lines. The others were much broader.

Q. The survey of 1937, Mr. Byers, which you have identified here, was that made with respect to all lines covered in the survey of 1933 that has now been admitted into evidence here?

A. I believe so.

Q. Will you state whether or not this shows the costs of handling steel conduit?

A. Yes, it does.

Q. Thank you.

A. Yes, sir.

Mr. Austin: Now, with all of the qualifications that you placed on the previous exhibit, with my statement that I am going to call the witnesses who prepared this, and who may be cross examined, I offer this in evidence, but do not offer Respondents' Exhibits for identification 276 and 277.

Mr. MacIntyre: I object to Respondents' Exhibit
4034 275 as being incompetent, irrelevant and immaterial.

And my objection will stand against it on those same three grounds, even if it were to be offered with such limitations attached to it as have been attached in the receipt into evidence here of Respondents' Exhibit 272.

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Trial Examiner Norwood: In what particular is it more objectionable than the others?

Mr. MacIntyre: I think it is just as objectionable, I do not think that it is any more so.

Trial Examiner Norwood: I shall overrule the objection and receive the exhibit, with the same limitation as suggested by the counsel, and including all the limitations attached to the receipt of 272. The exhibit received is Respondents' Exhibit 275, consisting of 14 printed pages. It is a bound pamphlet.

RESPONDENTS' EXHIBIT NO. 275 was offered and received in evidence.

By Mr. Austin:

Q. Mr. Byers, I hand you Respondents' Exhibit for identification 278 and call your attention to the pages 48 through 60, and ask you to tell us what this is?

A. This is a published report of the United States Department of Commerce, published in 1931, covering the problems of wholesale electrical goods distribution.

4035 Pages 48 to 60, to which you have referred, are descriptions of methods and other details in connection with the statistical presentation of cost information.

Q. My Byers, you were with NEWA in 1931, were you not?

A. Yes, I was.

Q. You stated that you assisted the operating cost committee in preparing this survey of 1933. Can you state from your own knowledge whether the members of the operating cost committee had in their possession for use during the time they prepared their cost survey of 1933 Respondents' Exhibit for identification 278?

A. Yes, they did.

4037 Mr. MacIntyre: I would like to ask a question or two in connection with that same identification, while we are on the question of identification, if I may.

Trial Examiner Norwood: I do not think you can if he does not offer it now.

Mr. MacIntyre: If this witness is gone when it is offered, then I may be deprived of that right.

Mr. Austin: You may inquire now.

4038 Trial Examiner Norwood: Counsel agrees that you may.

By Mr. MacIntyre:

Q. Mr. Byers, what do you know about the material contained in this document Respondents' Exhibit 278 for identification on pages 46 to 60, as to whether or not certain members of the electrical wholesalers industry and the electrical manufacturing industry submitted the information contained therein to the Department of Commerce, with the request that it be published in the manner that it is here in this document?

A. I think your question—

Q. I am asking you what you know about it, as to whether it is a fact or not?

A. I think I can answer your question quite completely, sir.

Q. All right.

A. That document, and the reason that I had not given this information before, I did not quite get the question that Mr. Austin implied or asked, rather, before, but that particular report is a specific detailed report on the operation of a single individual electrical wholesale establishment. It is not an average of any kind. It is a study that took three years to make of a Southern house, and the Department of Commerce was engaged by the
4039 National Electrical Wholesalers' Association to make a cost survey of a selected wholesale establishment, and that is the report after three years' work by the Department of Commerce, and that report has been considered to be the finest accounting and statistical example of a cost study that the electrical industry knows about.

Q. That is by the members of the NEWA?

A. No, sir, by the entire industry, sir.

Q. How did you learn about what establishment it was whose figures were used in the preparation of this material that is set forth on pages 48 to 60 here?

A. I don't think I understand your question.

Q. I ask you, how you learned whose figures were used in the preparation of the material that appears on pages 48 to 60 of this document?

A. I think that information is recorded, if I remember correctly, on page 2. It is all described in there.

Q. All you know about it is what is recorded in the document?

A. That is correct.

Q. You do not know anything else?

A. That is before my time, until 1930, when I was with the Association, of course, but this was instituted before I came with the Association, that the final report was prepared and presented as soon as I came with the Association.

4048 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment yesterday, the hearing in Docket No. 4452 is now reconvened in the Conference Room, 28th floor at 15 Broad Street, New York, New York, January 8, 1942, at ten a. m.

Please note the appearances.

ALFRED BYERS thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Austin.

Q. My Byers, yesterday I showed you Respondent's Exhibit for identification 274, which was described by you as a playlet entitled "Back To Profits."

Were you an employee of the Association at the time that playlet was produced?

A. Yes, I was.

Q. Were you present at the convention at which that playlet was produced?

A. Yes, I was.

Q. Will you tell us, for the record, the group of members of the Association which presented the playlet?

4049 A. Well, the operating cost committee was the group that contrived and presented the playlet.

Q. Can you state for the record the purpose for which that playlet was produced?

Mr. MacIntyre: I object.

Trial Examiner Norwood: Objection overruled.

You can put that in if you will briefly.

The Witness: May I have the question?

Trial Examiner Norwood: Read the question, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: It was produced for the purpose of trying to supply the membership with operating information that might be helpful to them individually in watching their own expenses, or operating their business.

By Mr. Austin:

Q. Thank you.

Now, I show you Respondent's Exhibit for identification 280-A through 280-Z-18, which are copies of Commission's Exhibits 318 through 330, and 334 through 364 (handing), and ask you whether or not during the month of November of 1941, I asked you to go over these copies of Commission's exhibits marking each abstract of bid contained therein so as to indicate whether the companies named
4050 were manufacturers of conduit or members or non-members of N. E. W. A., or non-identifiable companies, from your knowledge?

A. Yes, sir.

Q. Was the marking of these exhibits done under your direction, and does the exhibit show the work done in this regard by the Association?

A. Yes, it does.

Mr. Austin: I would like to offer these in evidence.

Trial Examiner Norwood: Is there any objection?

Mr. Austin: In an off-the-record discussion with Mr. MacIntyre I have agreed to try and clarify this offer on the record.

Trial Examiner Norwood: Yes.

Mr. Austin: First of all the key which shows the marking against each name does not appear on every sheet, it appears on the top sheet; it was one offer, and we will therefore staple them very carefully together, so the key will not be lost. Secondly, Mr. MacIntyre has called to my attention the fact that, for instance, the Home Lighting Company of Baltimore is marked as a non-identifiable person. Now, that does not mean that I do not know
4051 that the Home Lighting Company is a wholesaler or that I am claiming that it is anything other than a non-member of this Association. Therefore, with respect to companies whose names are marked as non-identifiable, it is only taken to mean on our part that from the point of view of this Association at the time they marked these exhibits, they did not know what that company was; it may be a wholesaler or anything else as for as we are concerned.

Is that satisfactory?

Mr. MacIntyre: It is known that they were not members of N. E. W. A.

Mr. Austin: It was known at that time that they were non-members of the N. E. W. A. In other words, anyone who is non-identifiable is a non-member of this Association.

By Mr. Austin:

Q. Mr. Byers, Mr. MacIntyre would like to have you explain for the record the key as to the markings which appear against each name so that in the event the key comes off the top of this we will be able to identify it for the record.

A. A circular marking indicates a member.

Q. A member of what?

A. Of the N. E. W. A.

A dash indicates a non-member wholesaler, and an "X" indicates a manufacturer.

Q. An "X" indicates what?

4052 A. A manufacturer.

Mr. MacIntyre: Of conduit?

The Witness: I couldn't say.

Mr. Austin: Yes, we will agree to that.

Mr. MacIntyre: Those that are not marked at all?

By Mr. Austin:

Q. Those that are not marked at all, such as this—

A. Are left blank?

Q. Those are the non-identifiable, is that correct?

A. Yes, sir.

Q. But they are known not to be members of your Association?

A. Yes, sir, that is right.

Mr. MacIntyre: I have no objection.

Trial Examiner Norwood: Received and marked Respondents' Exhibit 280-A to Z-18, and conditioned as stated.

RESPONDENTS' EXHIBITS 280-A to Z-18, were offered and received in evidence.

4060 Trial Examiner Norwood: Cross-examine.

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Cross-Examination by Mr. MacIntyre.

Q. Mr. Byers, will you state all you can recall, or each of the matters that you can recall which have been included among the recommendations and as a part of the recommendations of the conduit committee in its reports to manufacturers?

Trial Examiner Norwood: That is the conduit committee of the N. E. W. A.?

The Witness: Very frankly, sir, I find that difficult, for this reason, that I read all of these reports, and
4061 offhand, this way, I don't think I could recall the direct definite recommendations of any particular committee.

By Mr. MacIntyre:

Q. How can you state then, as you did to Mr. Austin, positively that they do not contain certain recommendations?

Mr. Austin: I have no intention of delaying this proceeding, and I have no intention of continually objecting to questions as other counsel do sometimes, but I would ask Mr. MacIntyre, please, not to misstate what the witness has said, or, further, I would ask him to listen to my questions more closely. The question to which he referred specifically stated at the very beginning "to your own recollection"; it did not call for a positive statement, and it did not get one.

Trial Examiner Norwood: You object to the question, then, because of the assumption?

Mr. Austin: I object to the question because of the assumption.

Trial Examiner Norwood: Objection sustained.

By Mr. MacIntyre:

Q. Is it your positive statement, or is it your testimony at this time, that you are positive that no committee report—conduit committee report of N. E. W. A.—ever carried a recommendation to the manufacturers of conduit concerning the use of a basing point system for pric-
4062 ing?

A. Yes, sir, I think it is.

Q. How can you make such a statement as that, if you cannot recall what those committee reports have contained in the way of recommendations?

A. Well, I think that would be, sir, a very important type of recommendation, and I might remember it, and I just don't remember it.

Q. In other words, it is your testimony now, that you just don't remember such being included; is that your testimony?

A. That is correct.

Q. And is that as far as you intend your testimony to go here?

A. Well, it is as far, I guess, as I could go, without referring directly to the reports.

Q. Is that as far as you want your testimony to be taken—that is, in its significance as to what those reports contained?

A. Yes, I think so.

Q. Do you recall any of these conduit committee reports of N. E. W. A. carrying recommendations to the manufacturers of conduit concerning adoption and use of consignment stock agreement forms?

A. I don't think forms, but I recall the contents of reports being to the effect that some form of con-
4063 signment might be considered.

Q. In fact, urged that it be considered and adopted, is that true?

A. It may be.

Q. As including an allowance for compensation over and above the Pittsburgh basing point price, plus freight at point of delivery, for the jobber, is that correct?

A. I couldn't answer that, sir.

Q. You just have no recollection on it?

A. No, I haven't.

Q. Do you recall conduit committee reports of N. E. W. A. carrying recommendations to conduit manufacturers concerning elimination of warehouse stocks?

The Witness: May I ask you to repeat that?

Trial Examiner Norwood: Read the question, Mr. Reporter.

Mr. MacIntyre: Please read it.

(The question referred to was read by the Reporter.)

The Witness: Yes, I can recall that being included in reports.

By Mr. MacIntyre:

Q. Do you know the purpose of those recommendations?

A. Well, I think I do, sir, yes.

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Q. If you are not positive I would not care for
4064 you to state, but if you have first-hand knowledge of why they were included, I would like to have it.

A. If I may answer your question in this respect or in this manner, I will be glad to.

I can tell you this, that I know from speaking with members of the committee why the elimination of warehouse stocks of manufacturers was considered an economically good suggestion. Now, that is as far as I can answer your question, sir.

Q. You had to depend upon hearsay for that? You had no knowledge as to why that went in there, other than what they told you?

A. Of course, I have an opinion about warehouse stocks.

Q. Well, I would rather not have your opinion on that, if you do not have the facts we will pass that.

A. All right.

Q. What other people in the Department of Commerce, Bureau of Census, can you name with whom you have discussed cost information and methods of securing cost information?

A. I don't think I can name any others than I already have named.

Q. Let us see that we have a record, a correct record of those. You have named Mr. Virgil D. Reed.

A. Yes, sir.

Q. An assistant director of the Bureau of Census
4065 of the Department of Commerce?

A. Yes, sir.

Q. When did you talk to Mr. Reed?

A. I have talked to Mr. Reed on several occasions. The most recent was in December of 1939, when I was invited to address the Joint Convention of the American Marketing Association and the American Statistical Association on the use of Department of Commerce surveys and reports in the wholesale trade.

Q. What was the first time that you talked to Mr. Reed?

A. I don't think I can remember it exactly, sir.

Q. Well, approximately?

A. Oh, I guess five years or maybe more.

Q. About 1936 or 1937?

A. I think so.

Q. And it is your testimony that Mr. Reed, as an associate director of the Bureau of Census of the Department

of Commerce, invited N. E. W. A. to make surveys for the United States Government concerning the methods of computing costs in the wholesale electrical industry? Is that your testimony?

A. I do not think I understand the question.

Mr. MacIntyre: Please read the question.

Trial Examiner Norwood: Read the question.

(The question referred to was read by the Re-4066 porter.)

The Witness: Definitely not, sir.

By Mr. MacIntyre:

Q. What did he ask you to do? Will you please tell us? That is, for the United States Government?

A. Well, he just simply asked us if we would co-operate by making certain material that we had, available to the Department.

Q. What was the nature of the material that he asked you to make available to the United States Government?

A. Operating cost studies and—well, operating cost studies, that answered it.

Q. Did he ever tell you that that material was properly compiled and carried statements as to proper methods of accounting and allocation of costs?

A. Yes, I think he did discuss those, but I would like to add at this point that Dr. Reed did not discuss these things in the detail that some of the other gentlemen I have named discussed them with me.

Q. I am not asking you whether or not Dr. Reed discussed them, I am asking you whether or not he made statements to the effect that you had properly—or that N. E. W. A. had properly—bade a survey of costs, had properly applied practice and theory of approved accounting methods in compiling cost information. Did he tell you that?

4067 A. Well, I don't think I can say definitely that Dr. Reed made those statements. I don't think I would care to say that.

Q. You do not think he did say that?

A. No, I said I don't think I would care to say that.

Q. Did he ever approve any of the methods—accounting or methods of compilation—which N. E. W. A. had been engaged in.

A. He didn't approve them, no, and he didn't—in fact, he didn't approve nor did he disapprove them.

What I am trying to answer is that Dr. Reed really made no statements directly in the manner that I know your questions would like to get the information. Dr. Reed, in his position as the associate director, really discussed with me broad questions of co-operation on the census and not in the detail that I think you would like to have the information.

Q. Did anyone in the United States Government, either in the Bureau of Census or otherwise, ever approve any of the methods used by N. E. W. A. in applying accounting or in compilation of any of its information?

A. Yes, I would say they did.

Q. Who was it?

A. Both Mr. Gosnell and Mr. Albright.

Q. You stated that Mr. Gosnell—will you please
4068 give the full spelling of his name?

A. G-o-s-n-e-l-l.

Q. What is his position?

A. He is chief statistician of the Bureau of Census.

Q. It is your testimony that he approved as proper the methods that were used by N. E. W. A. in allocating cost elements in figuring out what the costs of distribution were—the costs of distribution were in the wholesale electrical industry, is that your testimony?

A. I would like to answer your question, if I may, by stating that, in the first place, I am not sure how you can use the word "approve", for we asked for no approval as such, but I can say with certainty that Mr. Gosnell did think, and expressed to me, the opinion that the operating cost studies of the Association were conducted along excellent lines, and the procedures in applying weighted averages and such things hardly could be improved upon, in his opinion.

Q. He stated that opinion to you?

A. To me, yes.

Q. Will you please state the words that he used in stating that opinion to you?

A. I am afraid I can't do that, sir.

Q. When did he state that opinion to you?

A. Well, he stated it to me, as nearly as I can recall
now, at a meeting in Philadelphia, in 1939 or 1937—
4069 I am not certain—because there was a census just about to be taken, and we were invited, as were other wholesale industries, to come to Philadelphia and

attend the conference of the Bureau of Census, to assist with him—or rather to discuss the forms that the Bureau of Census were to use, and on that particular day I happened to have luncheon with Mr. Gosnell, and our conversation happened to be about these subjects and I recall his, in general terms, saying just what I have indicated.

Q. I would like to know Mr. Albright's first name.

A. John A.

Q. John Albright?

A. John A. Albright.

Q. He is the chief of the electrical division of the Bureau of Census, is that correct?

A. No, it is not; he is chief of the electrical section, I think that is how they express it, of the Bureau of the Census.

Q. On what dates did you have any discussions with Mr. Albright?

A. I am afraid I couldn't name any dates, other than the one I have just named for Mr. Gosnell, which is not an exact date, just a year, but I have spoken with Mr. Albright on a number of occasions.

Q. Do you consider that he was present at the 4070 time that you had your discussions with Mr. Gosnell?

A. I am sorry; I did not get the meaning of that question.

Trial Examiner Norwood: Read the question.

(The question referred to was read by the Reporter.)

The Witness: Yes, he was.

By Mr. MacIntyre:

Q. And heard what Mr. Gosnell said to you on each of the occasions that you talked to Mr. Gosnell, is that correct?

A. No, that is not correct. I thought you were referring to the conversation I remarked about with Gosnell, but Mr. Albright was not present with me every time I spoke to Mr. Gosnell.

Q. But he was present at the time that you discussed this matter with Mr. Gosnell in Philadelphia, about which you told us?

A. Yes, sir, he was.

Q. And heard the conversation?

A. Yes, he did.

Q. Can you name any other people with whom you have talked in the Bureau of Census about those matters?

A. No, I don't think there were any others.

Q. Do you know where Mr. Theodore Beckman is today?

A. I know he is connected with Ohio State University, but I can't give you any other location than that.

4071 Q. How long has it been since you have seen him?

A. I believe the last time I saw Dr. Beckman was in January of 1941, in Washington.

4072 By Mr. MacIntyre:

Q. Is it your testimony, Mr. Byers, that Mr. Bedient did not attend a meeting of the conduit committee at any time?

4073 A. No, it is not.

Q. Will you please name the dates on which Mr. Bedient did attend meetings of the conduit committee?

A. I don't know if he did attend any meetings of the conduit committee. I couldn't name any dates.

Mr. Austin: Before there are any further questions, once again I am going to state that I am not going to try and limit cross-examination in any way, but I do ask Mr. MacIntyre to be fair. His questions now are outside the scope of the direct examination. He is asking whether Mr. Bedient ever attended any conduit committee meetings. We have had nothing in the record as to whether or not Mr. Bedient ever attended committee meetings. We have had in the record whether or not he was a member of the committee on that date.

Trial Examiner Norwood: Objection overruled.

By Mr. MacIntyre:

Q. You then do not know the dates on which Mr.—you do not know whether Mr. Bedient did attend meetings of the committee and, if so, on what dates he did so attend, do you?

A. No, I don't.

Q. Or what participation he took in the activities of the committee at the time of its meetings, do you?

A. No, I don't.

Q. You were in the hearing room yesterday when

4074 Mr. Tolles testified about the membership lists of the N. E. W. A. and heard that testimony, did you?

A. Yes, I did.

4075 By Mr. MacIntyre:

Q. Is it your testimony, Mr. Byers, that the conduit committee members during the course of their meetings never discussed anything other than what you had placed on an agenda for them to discuss?

A. I don't think I could say as to that, Mr. MacIntyre. I don't attend all those meetings.

Q. You don't want your testimony to be taken to that effect, then?

A. Well, it really couldn't, because I am not there
4076 all the time.

Q. You don't want your testimony to be taken as indicating that the words that you placed in the agenda each time were the words used in the results that were arrived at at the end of the discussion on the various subjects at the meetings, do you?

The Witness: I am afraid I will have to ask you to read the question.

Trial Examiner Norwood: Read the question, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: No, I don't think they were.

By Mr. MacIntyre:

Q. Do you think—do you mean that they were in all instances?

A. What I mean, Mr. MacIntyre, and, of course, you know it, the agenda is merely the guide for the committee's discussions, and the reports would not necessarily have to be the same as the subject would appear on an agenda.

Q. In other words, they could follow, and have followed, in the course of their meetings statements of their recommendations, after discussing certain matters, in accordance with the wording of the agenda—that is, of the subjects as worded in your agenda—varying at times
4077 from the wording of the subject in your agenda; is that correct?

A. Well, I think, sir, that the report of the committee necessarily would be quite different from the agenda because the agenda simply mentions a subject, and not any recommendation or suggestion as such.

Q. Sometimes the descriptions of the subjects have varied in their wording from the agenda to those con-

tained in the record of the discussion on this subject; is that correct?

A. I think that certainly might be.

Q. And sometimes they have not varied in the description, is that correct?

A. I really don't know.

Q. I believe you have told us already that you have not attended all of the meetings of the conduit committee of the N. E. W. A., is that correct?

A. That is correct, yes.

Q. Then, are you in a position to tell us who attended all of the meetings?

A. I am as far as our members are concerned, of the committee.

Q. You are relying in that direction upon reports made to you by those who attended as to who were there, is that correct?

A. No, it is not, sir, as far as our members go, because I think it was brought out by me previously that I
4078 take the attendance record, and that is how I know who is there.

Q. As to those meetings where you did not attend, how do you ascertain who was there and who was not?

A. Well, I take the attendance at all of the meetings, but that does not mean that I attend the meetings. What I mean, I will go into the meetings and for the purpose of our necessary records take the attendance and then I immediately leave the room.

Q. Are you prepared to testify that after you took the attendance of meetings, and then left, that no one else ever comes in the meeting before it concludes?

A. No, I don't think I could.

Q. You are acquainted with the volume of operations of some of the members of the N. E. W. A., are you, that is, generally?

A. Do you mean their sales volume?

Q. Yes.

A. No, I am not.

Q. You are sufficiently acquainted with the operations of some of your members to know that some of them have a larger business than other members have?

4080 Mr. Austin: Read the question, please.

(The question referred to was read by the Reporter.)

The Witness: Yes, I think they have.

By Mr. MacIntyre:

Q. Is it not a fact that General Electric Supply Corporation, the Graybar Electric Company, and the Westinghouse Company are recognized among your membership and by the officials of N. E. W. A. as being the largest operators in the wholesale electrical trade?

Mr. Austin: If Your Honor please, I would like to ask Mr. MacIntyre to state the names of companies correctly. Westinghouse Company is a manufacturer of electrical supplies. It does not manufacture conduit.

Trial Examiner Norwood: I think the witness understands.

Mr. Austin: I am sure the witness understands, but I want to be sure the Commission understands when they read the record.

Mr. MacIntyre: That is the Westinghouse Electric Supply Company.

4081 Trial Examiner Norwood: Answer the question.

The Witness: Yes, I would say that is so.

Mr. MacIntyre: That is all.

4099 J. G. JOHANNESEN was thereupon called as a witness on behalf of the Respondents and, having been first duly sworn, testified as follows:

Direct Examination.

Trial Examiner Norwood: Please give your full name to the reporter, Mr. Johannesen.

By Mr. Austin:

Q. You are Mr. J. G. Johannesen?

A. Yes.

Q. What is your present position?

A. Vice president of the General Electric Supply Corporation.

Q. How long have you been in that present position?

A. Since 1929.

Q. Will you please tell us briefly where you have been located in that position since 1929?

A. For two years in New York in charge of the
4100 General Electric Supply Corporation houses located in New York and northern New Jersey; then for

seven years at Bridgeport, Connecticut, in the capacity as vice president in charge of operations nationally for the General Electric Supply Corporation; and for the last three and one-half years I have been back in New York in the same capacity as vice president of General Electric Supply Corporation in charge of the New York and Jersey operations of the Supply Corporation.

Q. You are named in the complaint in this case as chairman of the National Electrical Wholesalers Association.

Do you occupy that position?

A. I do not.

Q. Were you chairman of the National Electrical Wholesalers Association on January 25, 1941, the date of the issuance of this complaint?

A. No, sir.

Q. Were you ever chairman of N. E. W. A.?

A. Yes. I was chairman for two years of N. E. W. A.

Q. Can you tell us for what years you were chairman, sir?

A. July 1, 1938, to July 1, 1940.

Q. Did you, during the period you acted as chairman of N. E. W. A., ever have any dealings with the offices or officers of Rigid Steel Conduit Association?

A. I did not.

Q. Did you, during the period you acted as chair-
4101 man of N. E. W. A., ever have any dealings with Organization Service Corporation, or a Mr. Herbert S. Blake, Senior?

A. I did not.

Q. Did you ever at any time to your knowledge have any dealings with either of the above organizations or their officers or directors?

A. I do not recall I ever had any meetings or discussions with them.

Q. How long have you been a representative of G. E. Supply Corporation in N. E. W. A.?

A. I have been a representative of the G. E. Supply Corporation in N. E. W. A. since it was organized in 1926, but I was a representative of a house operating or several houses operating under other names prior to that time or many more years or many previous years.

Q. Now, Mr. Johannesen, during those previous years when you were representative of other houses in N. E.

W. A., were those houses connected with G. E. Supply Corporation?

A. They were connected not with G. E. Supply Company. The G. E. Supply Corporation was not organized until 1926 and did not become a national operation until the year 1929. But these houses I speak of were, in many cases, owned by the General Electric Company, but they operated under different names, and they were, in most cases, corporations incorporated in the states in which they were located.

4102 Q. During the period you have represented G. E. Supply Company in the N. E. W. A., have you ever been a member of that Association's conduit committee?

A. I have not.

Q. During the period you represented G. E. Supply Company in N. E. W. A., have you been a member of N. E. W. A.'s operating cost committee?

A. I have been; yes.

Q. How long were you or have you been a member of the operating cost committee?

A. As I recollect it, it was either at a meeting in 1932 or the first meeting in 1933 that I was appointed a member of that committee.

Q. Did you ever occupy the office of chairman of the operating cost committee?

A. I did.

Q. For how long a period did you hold that position?

A. From the time I just referred to, 1933, up until the present time, and I am still chairman of that committee.

Q. So that you were chairman of the operating cost committee at the time Respondents' Exhibit 272 was prepared?

A. I was; yes, sir.

Q. And you were also chairman of the committee at the time Respondents' Exhibit 275 was prepared?

A. I was.

4103 Q. Will you describe, briefly, Mr. Johannesen, for the record, the organization and activities of N. E. W. A.'s operating cost committee?

A. The operating cost committee was appointed by the Association for the purpose of trying to determine accurate costs of handling the different commodities that are usually handled by electrical wholesalers and to impart that in-

formation to the members so that they, in turn, could study their own records and see how their own records compared with the study made by the cost accounting committee.

Q. Mr. Johannesen, will you look at Respondents' Exhibits 272 and 275 and tell me whether the operating cost committee, under your chairmanship, treated any of the commodities covered by those studies differently from the way they treated other commodities covered in those studies.

Mr. MacIntyre: I object. It is irrelevant and immaterial as to whether the cost of other materials in the electrical industry have been considered in the same light and in the same way that costs of handling conduit by wholesalers have been considered.

Mr. Austin: If Your Honor please,—

Trial Examiner Norwood: Well, he might show that, I think.

Objection overruled.

By Mr. Austin:

4104 Q. You may answer.

The Witness: Will you please read that question to me?

Mr. Austin: Will you read the question, please?

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: They did not.

By Mr. Austin:

Q. Can you tell me by whom the questionnaires upon which the cost studies are based, were prepared?

A. There were several meetings of the cost study committee as a whole. There were probably, as I recall it, seven members or eight members on that committee.

Then, in order to prepare the questionnaire and the other information desired, a sub-committee was appointed, a smaller committee, and that sub-committee, as I recall it, after several meetings of the general committee, with the co-operation of the Association headquarters, prepared the questionnaire that was sent up.

Q. Were those questionnaires sent to all the members of N. E. W. A.?

A. They were sent to all members so far as I know.

Q. I show you Respondents' Exhibit 278, and ask
4105 you, as chairman of the operating cost committee, whether that document was used by the operating cost committee in the preparation of its questionnaires and in the preparation of its cost surveys?

(Counsel hands document to witness for examination.)

A. It was.

Q. You have stated that the preparation of questionnaires after meetings of the full committee were prepared by a sub-committee.

Did that sub-committee have a name?

A. Yes. They had a name, but for the moment I cannot think of it. But the record will show.

The sub-committee was made up of men who were experienced in accounting and statistical work.

If I can refer to the record I will refer to that and show it.

Q. I show you Respondents' Exhibit 272 and ask you if that is the membership of the operating cost committee in 1933?

(Counsel hands document to witness for examination.)

A. That is; yes.

Q. Now I show you page 3 of Respondents' Exhibit 275, and ask you if that is a correct naming of the membership?

(Counsel hands document to witness for examination.)

A. That is right.

Q. Keeping these before you, will you tell us why
4106 the men named as members of the operating cost committee during the period 1932 to 1937 were named as members of that committee?

4107 The Witness: I know that the men on this committee were named because it was felt they were experienced in the operation of the electrical wholesaling business, and in naming them they not only put men on that committee who were qualified as accountants and were experienced and qualified as statisticians, but they also put men on that committee who had operated and managed electrical wholesaling houses for many years so as to get a cross-section.

Mr. MacIntyre: I move that the answer be stricken. He has stated why people took certain action without any foundation being laid to show why that action was taken.

Trial Examiner Norwood: I do not think he has stated why. He stated in view of the qualifications of these men.

I will consider that from its factual angle only.

You know those men are as stated there?

The Witness: Yes.

Mr. Austin: We will clarify that further, if Your Honor please.

Mr. MacIntyre: May we have the answer read?

He unqualifiedly stated those men were named because of those qualifications.

I cannot, of course, have it referred to after the reporter has lost it when it comes back to cross-examination.

4108 Trial Examiner Norwood: I think we will let the question and answer stand.

Motion denied.

Objection overruled.

By Mr. Austin:

Q. Mr. Johannesen, Respondents' Exhibit 272 carries the name of Mr. DeForest of Graybar Electric Company.

Can you tell of your own knowledge whether Mr. DeForest is in the statistical accounting department of that company?

A. No, he is not.

Q. What is his job?

A. Mr. DeForest, as far as I know at the present time, is in charge of sales and manager of the New York district of the Graybar Company.

I may be somewhat off in the title. I don't know what his title is. But you can refer to it. But he is in the practical and sales and operating end of the business.

Q. Do you remember Mr. Ramsberg of Graybar?

A. Yes. Mr. Ramsberg was connected with Graybar at its headquarters and was in charge of what they called service or operations which took in accounting and statistical work.

Q. Referring to Mr. Dick of Westinghouse Electric Company, what was his position?

A. Mr. Dick was and still is in the accounting statistical work of the Westinghouse Electrical Supply Company.

4109 Q. Mr. Williamson of Westinghouse?

A. Mr. Walter Williamson was at that time in the—I don't know what his official title was, but he was in charge of the Westinghouse Electric Supply Company in New York, and in—I think in charge of the whole New York district which takes in many houses.

Q. Your position, as you have already stated, was an operating position for General Electric Supply?

A. Operating and management.

Q. What is Mr. Nichols' position?

A. Mr. Nichols is comptroller of the General Electric Supply Corporation, located at Bridgeport, Connecticut, which is the headquarters office of the Supply Corporation.

Q. Now, in Respondents' Exhibit 275, a good many of the names are the same, but I notice a Mr. Perry, and ask if you can tell me what his job was and what company he was with?

A. Mr. Perry superseded or succeeded Mr. Ramsberg, who resigned, as I understand, from the Graybar Electric Company, and Mr. Perry succeeded him, took over the type of work Mr. Ramsberg was doing.

Q. How about Mr. W. J. Kranzer?

A. Mr. Kranzer was added to the committee because of the fact that he operates a rather substantial electrical wholesaling business in New York here and is not only fully acquainted with the management and operation of the
4110 wholesaling business, but is also acquainted with accounting work.

Q. Is Mr. Kranzer employed by G. E. Supply, Westinghouse or Graybar?

A. No, he is not.

Q. You stated that the bulk of the work in the preparation of the questionnaires and the cost surveys of your committee was done by a sub-committee.

Can you tell me first which members of your operating cost committee—that is, the management and operation men or the accounting and statistical men—were the members of the sub-committee?

A. Mr. Nichols, comptroller of the General Electric Supply Corporation, was one, and he headed it up. And Mr. Ramsberg of the Graybar Electric Company, and Mr. Dick of the Westinghouse Electric Supply Company; that was the sub-committee appointed.

Q. Now, after Mr. Ramsberg got out and Mr. Perry came in, did Mr. Perry take his place on the sub-committee?

A. Yes, he did.

Q. Did Mr. Kranzer operate with that sub-committee?

A. He did.

Q. After his appointment?

A. After his appointment, yes, sir.

Q. During the period you were chairman of the operating cost committee, Mr. Johannesen, did you ever con-
4111 fer with members of the N. E. W. A.'s conduit committee with respect to the preparation of those portions of the cost surveys relating to conduit?

A. No, I did not.

Q. During the period you were chairman of the operating cost committee were you ever asked by the chairman of the conduit committee or any members of the said committee to give particular attention or special treatment to the cost figures in relation to cost or distribution of conduit?

A. No, I was not.

Q. Basing your answer solely on your own mental attitude at the time these surveys were being prepared, did you ever consider that the work of your operating cost committee—was to aid in fixing prices at which commodities were to be sold at wholesale?

A. Was not.

Mr. MacIntyre: I object.

Trial Examiner Norwood: Wait just a minute, please.

Mr. MacIntyre: I object to that question as improper in form, calling for improper testimony, as speculative and of a conclusive nature.

Trial Examiner Norwood: This witness is charged with being particeps criminis, is he not?

Mr. Austin: This witness is a respondent in this
4112 matter. Furthermore, my question was aimed at his whole mental attitude.

Trial Examiner Norwood: I think he can deny guilty knowledge.

Mr. MacIntyre: Certainly it is not that, that the question goes to. It is asking this man to interpret his actions.

Trial Examiner Norwood: That's right.

Objection overruled.

The Witness: Will you ask the question again?

I think I answered it before the objection was raised.

Trial Examiner Norwood: Let the answer stand.

By Mr. Austin:

Q. Was there, to your own personal knowledge and stating your own mental reaction, any such purpose in the preparation of the facts shown in these exhibits relating to the cost or distribution of conduit?

Mr. MacIntyre: I object. He is asking now—

Trial Examiner Norwood: I think he has already answered the question.

Mr. Austin: All right, sir; strike it.

Mr. MacIntyre: He is asking as to the purpose of other people now rather than just this man.

4113 By Mr. Austin:

Q. Mr. Johannesen, will you tell us whether during the meetings of the operating cost committee which you attended there was any discussion of the possible use of the figures you were preparing for the fixing of prices at wholesale?

A. There was not.

Q. Did you attend a meeting at the Biltmore Hotel on January 6, 1937, of Rigid Steel Conduit manufacturers and electrical wholesalers?

A. I did not.

Q. Mr. Johannesen, did you, prior to the commencement of this action, know that any such meeting was to be held or was held?

A. I did not.

Q. You have stated you have been chairman of N. E. W. A.; you have also been chairman of the N. E. W. A.'s operating cost committee; you were also vice president of G. E. Supply Corporation; and also been connected with other electrical wholesaling businesses, and in that capacity you have represented those businesses in N. E. W. A.; basing your answer on your background and experience and knowledge derived from all these petitions, I will 4114 ask you to state whether or not N. E. W. A. ever took any action respecting the use of its cost surveys by individual companies or members of the Association?

Mr. MacIntyre: I object. There has been no foundation to show this witness knows of all the action that has been taken by N. E. W. A.

Mr. Austin: If Your Honor please, my question specifically was based on his knowledge.

Trial Examiner Norwood: Well, I think that is a rather unfortunate form there. Ask him if he has any knowledge of that.

Sustain the objection to the form of the question.

By Mr. Austin:

Q. Have you any knowledge, Mr. Johannesen, of any action taken by N. E. W. A. with respect to the use of its

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cost surveys by individual members of the Association or individual companies?

A. I have not; no.

Mr. Austin: I think there is some more direct examination, Your Honor. I am through.

Mr. Bozeman: I have a few questions, please, Mr. Examiner.

Trial Examiner Norwood: Yes, go ahead, Mr. Bozeman.

By Mr. Bozeman:

4115 Q. Mr. Johannesen, does General Electric Supply Corporation engage in the manufacture of any merchandise?

A. They do not.

Q. And I take it, therefore, it does not manufacture rigid steel conduit?

A. It does not.

Q. What is the nature of the business of the Supply Corporation?

A. The electrical wholesaling of all types of construction material and appliances.

Q. It distributes merchandise for the General Electric Company?

A. It distributes merchandise of the General Electric Company and other manufacturers.

Q. Is the latter a substantial amount of its business?

A. It is. It is approximately a third to 40 percent of its business, as far as I recall.

Q. Mr. Johannesen, does the Supply Corporation have a number of houses located in various parts of the country?

A. They do.

Q. Will you describe briefly the district organization of the Supply Corporation?

A. There are 28 districts, so-called, and about 105 different warehouses operated in conjunction with these districts throughout the country.

4116 Q. Is each of the districts independent in the conduct of its affairs?

A. It is.

Q. And each district makes its own arrangements with manufacturers?

A. To a great extent.

Q. Are you the head of the New York district?

A. I am. New York and northern Jersey.

Q. What area does your district cover?

A. Takes in metropolitan New York, Long Island, up as far as this side of Poughkeepsie, and takes in northern New Jersey from Trenton up.

Q. Mr. Johannesen, have you ever been asked by a purchaser to quote prices on conduit F. O. B. factory?

A. We have not as far as I know.

Q. Have your customers from time to time stated to you whether they preferred delivered price quotations or F. O. B. factory quotations on conduit?

Mr. MacIntyre: I object to the question. It calls for hearsay and indefinite hearsay at that, without specifying who and when and whether or not they were particular instances.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

4117 Mr. MacIntyre: It is incompetent testimony.

Trial Examiner Norwood: Read the question.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Objection overruled.

By Mr. Bozeman:

Q. Have they stated to you that?

Will you answer the question, please?

Trial Examiner Norwood: You may answer.

Mr. Bozeman: Read the question again, please.

Trial Examiner Norwood: Read the question, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: They, as far as I know, always insisted on delivered quotations. Delivered price quotations.

Trial Examiner Norwood: You do remember some customers insisting on delivered price quotations?

The Witness: Oh, yes. That was the usual practice. I do not remember any case where they asked for prices F. O. B. factory.

By Mr. Bozeman:

Q. Mr. Johannesen, do you always follow the manufacturer's card prices in the sale of conduit?

A. We do not.

4118 Q. Have you been familiar with public bids made by the Supply Corporation in your district?

A. I have to a great extent. Not all public bids but many of them.

Q. Did the Supply Corporation ever file bids off the card?

A. They did.

Q. Did the Supply Corporation ever get any business—

4119 By Mr. Bozeman:

Q. Did the General Electric Supply Corporation ever get any business, as the result of any public bids on current card prices?

Mr. MacIntyre: I object. It is an improper question. It is not supported by material which we can refer to when we cross-examine the man on it.

Mr. Bozeman: This gentleman is head of the dis-
4120 trict he has just described a few minutes ago, and I assume Mr. MacIntyre in cross-examination will go into the extent of his knowledge, and I think he will find out there is a very good foundation for the knowledge.

If you want me to go into it, I will do so.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Mr. MacIntyre: Instead of me accepting the burden of showing that there is no foundation so that the question can be answered, I think the burden goes on direct examination to show there is a foundation.

Trial Examiner Norwood: Do you contend that he cannot tell us that?

Mr. MacIntyre: I contend there has been no foundation laid, Mr. Examiner, to show he has knowledge of those facts sufficiently to answer that broad question.

Trial Examiner Norwood: Oh, I see. Yes.

Would you be the one who would check up on that matter?

Do you supervise the sending out of the bids?

The Witness: I do not supervise the sending out of the bids, but I see and check many, in fact most if not all of the bids—public bids to see what competition is doing,
4121 because, that is how we can find out.

By Mr. Bozeman:

Q. What bids have you—

Trial Examiner Norwood: Do you say you can give fairly reliable information about this point?

The Witness: I can very definitely; yes, sir.

Mr. MacIntyre: If Your Honor please, the question is broader than just some. In other words, it calls for the witness to answer as to every instance what the result of the bidding was.

Trial Examiner Norwood: No. I think it elicits whether or not there are some occasions included in his whole experience.

Mr. MacIntyre: As to whether there are some occasions.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: I do not object to the question if it is so limited.

Mr. Bozeman: The question is whether this witness knows of any instance in which General Electric Supply Corporation ever received any jobs as a result of a public bid filed at a current card price.

Trial Examiner Norwood: Objection overruled.

Answer the question.

The Witness: I do not know of any occasion where
4122 we received business as a result of a public bid filed according to the card in the district where I am located.

By Mr. Bozeman:

Q. You mean where you received business as a result of that sort of bid?

A. That is right.

Q. Do you know, Mr. Johannesen, of any instance where the Supply Corporation got a building job at a price on the current card?

A. Over what period, may I ask you?

Q. Over the periods you have been in charge of the district office here?

A. I do not know of any case where they got a building job of any size on the card.

Q. Do you have a personal recollection of the extent to which the sales of General Electric Supply Corporation have been off the card?

4124 Mr. Bozeman: Will you please read the question?

Trial Examiner Norwood: Mr. Reporter, please read the question.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Just answer that.

The Witness: Yes, I do.

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Mr. MacIntyre: Objection to giving any testimony on that unless the records are made available for use on the cross-examination of this witness to test the correctness of his recollection on it, and that has not been done, and I do not think respondents' counsel intend to do it before this man leaves the stand.

Mr. Bozeman: He is here for cross-examination.

Mr. MacIntyre: Yes. But the information on which he is expected to base his testimony is not here.

Trial Examiner Norwood: Off the record, Mr. Reporter, please.

4125 (There was a discussion off the record.)

Trial Examiner Norwood: On the record.

By Mr. Bozeman:

Q. Mr. Johannesen, will you please state your recollection as to the percentage of the sales of General Electric Supply Corporation which were off the current card? I am referring to the sales in your district during the period you have been in charge of that district.

Mr. MacIntyre: I object to the question on the grounds I have just stated.

Trial Examiner Norwood: I think his objection should be sustained to that.

You are asking for percentages and for figures. We do have those tabulations and this discussion has rendered very clear to me that—

Mr. Bozeman: That tabulation that went into evidence covered the entire country. This gentleman is giving the figures according to his recollection in one of the largest markets for conduit in the country. It is confined to one area. And, moreover, it has been shown in the record that the General Electric Supply Corporation and General Electric Company are two entirely separate and distinct entities.

Trial Examiner Norwood: You may ask him what the sales were off the card to the extent of so many dollars and so many cents and what the sales were on the card.

4126 This percentage that you are asking for is a conclusion of something that might be an exact and scientific survey. I did not realize, in previous discussions, it was coming to this point. But it is very clear you should not give this in this vague way.

Mr. Bozeman: May I have an exception to Your Honor's ruling?

Trial Examiner Norwood: Yes.

By Mr. Bozeman:

Q. Mr. Johannesen, did you ever discuss with Mr. A. E. Newman or anyone else in General Electric Company the subject of meetings of the Rigid Steel Conduit Association?

A. I did not.

Q. Or with any other manufacturer of conduit?

A. I did not.

Q. Did you belong to any local wholesalers' association?

A. I did not.

Q. Did you ever have meetings with any other local wholesalers?

A. I did not.

Q. Did the Supply Corporation belong to the Rigid Steel Conduit Association?

4127 A. No, it did not.

Mr. Bozeman: That is all I have, Your Honor.

Trial Examiner Norwood: Any further questions on direct?

(No response.)

Trial Examiner Norwood: We will recess for an hour, until 1:30.

Mr. MacIntyre: I would like to either go ahead for fifteen minutes or come back at a quarter of two.

Trial Examiner Norwood: All right; we will recess until a quarter of two.

(Whereupon, at 12:30 p. m. a recess was taken until 1:45 p. m.)

4128 Afternoon Session.

1:45 p. m.

Trial Examiner Norwood: Proceed, gentlemen.

J. G. JOHANNESEN resumed the witness stand and testified further as follows:

Direct Examination (Continued) by Mr. Bozeman.

Q. Mr. Johannesen, do you make monthly sales reports of conduit to the manufacturers?

A. We do.

Q. Are you familiar with the form of those reports, and the type of information they contain?

A. Yes.

Q. Do these reports show the individual prices paid by the purchasers of conduit?

A. No.

Q. In other words, they show merely the net due the manufacturer from sales made by you?

A. That is right.

Q. Mr. Johannesen, are there instances where you make sales off the current card, without obtaining from the manufacturer any increase in his allowance to you?

A. There are, yes.

Q. Would the fact that such sales were made off
4129 the card be reflected in the monthly reports that you just mentioned?

A. No, it would not.

Q. Do the sales we are now discussing constitute a substantial part of your total sales of conduit?

A. Very substantial, yes.

Mr. Bozeman: That is all.

Trial Examiner Norwood: That is, the sales that you make below the card prices constitute a substantial part of your sales?

The Witness: Yes, sir.

Mr. Bozeman: More specifically, Your Honor, that the sales made off the card in situations where the Supply Corporation does not get a special reduction from the manufacturer would constitute a substantial part.

Cross-Examination by Mr. MacIntyre.

Q. There are also times when you make sales at card prices, when you are also able to get some special consideration from the General Electric Company; isn't that true?

A. There is no need for a special concession if you sell at card prices.

Q. I do not think that answers the question.

A. I don't understand the question.

Trial Examiner Norwood: As a matter of fact, how is it?

4130 The Witness: As a matter of fact, we would not sell, as far as I know, in any case at a card price if we had a special concession from the manufacturers.

Trial Examiner Norwood: You say there are no times when you have done that?

The Witness: So far as I know, sir.

Trial Examiner Norwood: You never have done that?

The Witness: No.

By Mr. MacIntyre:

Q. It is your testimony, is it, that you have never secured a concession from the General Electric Company at times when you sold on the card prices?

A. That is not what I said, so far as I know.

Q. I did not understand.

A. I say that is not what I said. I did not intend to say that.

Q. What is your testimony on that?

A. That when we secure a concession from the manufacturer we usually secure that concession in order to meet a competitive price, and we didn't sell at the card in that case.

Q. Is it your testimony that you have never secured concessions from the General Electric Company on conduit for use in sales by you at card prices?

A. So far as I know, we have not.

Q. You have never done that?

A. So far as I know, no.

4131 Q. Is it your testimony that the bid of the General Electric Supply Company for the delivery of conduit to the Brooklyn Navy Yard in New York, which is shown to be at the card prices on Commission's Exhibit 731,

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were purchased by you, or you expected to purchase the same from the General Electric Company at their net card prices?

A. What date is this, please?

Q. May 12, 1936.

A. I was not in New York. I know nothing about it.

Q. The testimony that you have given is limited to what period of time?

A. From either July 1st or August 1st, 1938, up until the present time.

Q. In other words, the testimony that you have been giving about sales being made or off cards is to be limited to the activities of the General Electric Supply Corporation in New York to that period of time, is that correct?

A. From my actual personal knowledge, yes.

Q. That period of time is what?

A. Either July 1st or August 1st, 1938, up to the present time. In other words, I was not—

Q. (Interposing.) You had no knowledge of any previous sales?

A. I have just general knowledge, but not from actual contact or experience, because I was not located in New York.

4132 Mr. MacIntyre: I ask Your Honor that all of the testimony that this witness has given concerning sales by the General Electric Corporation in the New York district, as to whether they were at or below card prices, be stricken from the record or limited to the period that he has just given. That they be limited as applying to the period that he has just given.

Trial Examiner Norwood: It will be limited so far as this testimony is limited. There is no use of my striking it, I think; it is limited by what he has said, is it not?

Mr. MacIntyre: I am not asking that it be stricken, I am asking you that you rule that it is limited to the period which he has stated.

In other words, otherwise the record is confused, because he stated, and without qualifications as to the period of time, that he had knowledge of activities, without specifying time, and now on cross-examination this shows that he had no knowledge.

Trial Examiner Norwood: I could not make any ruling on the basis of inferences. We will consider those two together, and that is all that can be done about it.

By Mr. MacIntyre:

Q. Have you handled all of the bids that were made by the General Electric Supply Corporation to the public bodies in the New York district since 1938?

4133 A. No.

Q. Who handled those?

A. They had a number of people. When you speak of handling, I am not sure what you mean by that, but if you mean actually making them, they were made by several different people during that period.

Q. Were they all brought to your attention?

A. Any quotation or any bid of any size was brought to my attention after the bid was made. When I speak of any size, I mean anything perhaps over a few hundred dollars.

Q. Was brought to your attention?

A. Yes, sir.

Q. Did you ascertain how those bids were figured?

A. Yes, sir.

Q. In those instances?

A. That is right.

Q. And that is on and after August, 1938?

A. July or August; I am not sure whether it is July 1st or August 1st that I came down to New York from Bridgeport.

Q. Where in those instances your bid, after having been opened by the Federal Awarding Officer—that is, the Public Awarding Officer—was shown to be the same as those of other bidders—that is, the same prices as those of other bidders—how do you explain them becoming the same?

A. Not very often they were the same. I recall

4134 very few instances where they happened to be; but there was never any case that I know of on conduit.

Trial Examiner Norwood: He did not ask you that. He said in cases where they were the same, how do you explain it.

The Witness: I cannot explain; I do not know whether they were the same, but I could not explain why they were the same.

By Mr. MacIntyre:

Q. Although you submitted your bid, you cannot explain how it came to be the same as the bids of others?

A. No.

Q. Do you have instructions, that is, from the General Electric Company, on the matter of how to bid?

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A. We have a consignment agency agreement, which I think, when it was originally put into effect, the distributor was supposed to follow, but from a practical standpoint in the New York market we followed that plan very seldom.

Mr. MacIntyre: Will you please read the question to the witness?

Trial Examiner Norwood: Read the question, Mr. Reporter.

(The question referred to was read by the Reporter.)

Mr. Bozeman: If Your Honor please, I submit that
4135 this is beyond the scope of the single question, as I recall it, that was put to Mr. Johannesen on direct regarding public bids. He was asked as to whether to his knowledge that company had ever received any business on a public bid made at the then current card. That is the entire extent to which I went into the matter.

Mr. MacIntyre: And they went on and asked more questions as to whether he had bid at the card or below the cards, and whether he was bidding on General Electric Company's product or some others.

Trial Examiner Norwood: I think you are getting a little bit afield, but I am going to overrule the objection to that question. Let him answer it.

The Witness: I answered it.

Will you read that question?

Trial Examiner Norwood: Read the question Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: I will try to answer it a different way: No.

By Mr. MacIntyre:

Q. How did you arrive at the prices that you had bid?

A. By considering our cost, and, as far as possible,
4136 considering competition.

Q. And what do you mean by considering competition?

A. Well,—

Mr. Bozeman: Your Honor, following my objection to this line of testimony, it is clearly beyond the scope of what I went into.

Trial Examiner Norwood: It is not clear. I am not sure of that.

Read the question, Mr. Reporter.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: He testified as to the percentage on the cards and off the cards.

Mr. Bozeman: No, he did not testify to that, Your Honor; he testified that he never got any business on public bids where he bid on the current card.

Mr. MacIntyre: Can't we find out now why he did not?

Trial Examiner Norwood: I think I was wrong in saying he was going beyond the scope. I think he may bring that out.

You can ask him further questions if you want to.

Objection overruled.

Mr. MacIntyre: Will you please read the question?

Trial Examiner Norwood: Read it.

4137 (The question referred to was read by the reporter.)

The Witness: By considering competition, I mean considering competitive prices that have been quoted previously on public bids.

By Mr. MacIntyre:

Q. How is it that you arrived at the same price that your competitors arrived at in the submission of the same bid—say, to the Federal Government in bids under seal—that are different from prices that you or they had previously submitted in previous bids?

A. That is a long question. I am not sure whether I understand it.

Read it again, please.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Mr. Bozeman: The question is improper in form, Your Honor.

Trial Examiner Norwood: I think it is all right.

The Witness: I am afraid I do not quite understand the question.

Trial Examiner Norwood: Well, where you and your competitors submit identical bids, and those bids are

4138 different from the prices at which the previous bids have been let, then how do you account for the identity or similarity of those bids?

The Witness: I can't account for them, except that we follow quite closely on public bidding the bids that are put in by the different people who quote on open bidding; that may be manufacturers, it may be a wholesaler; and we tab-

ulate on any fair sized orders the prices quoted, and we use that information to guide us as far as possible in our future bidding on similar jobs.

Trial Examiner Norwood: Yes, but where you do not follow that previous figure which is set by a letting, and still you submit identical bids, how would you reach that figure? How would you account for the identity there?

The Witness: If I am not mistaken, before I stated I don't know how identical bids could be submitted on an item of that kind.

By Mr. MacIntyre:

Q. In those cases where you have arrived at identical bids with those submitted by your competitors, and they are different from any that you or your competitors previously submitted to the same awarding officer, how do you in such instance determine what figure you are going to bid, by considering competition?

A. I thought I answered that, but I will try to
4139 answer that again.

Trial Examiner Norwood: I think he answered that.

The Witness: I think I answered it.

Trial Examiner Norwood: I think you said there was no explanation?

The Witness: For my part of it, yes.

Mr. MacIntyre: He said there is no explanation as to how his competitors came to be the same.

Trial Examiner Norwood: That is right.

Mr. MacIntyre: Now I am asking him how he figured his bid in such instances.

Trial Examiner Norwood: I beg your pardon.

Answer that.

The Witness: I thought I answered that previously; however, as I said before, where we get information on open bidding what our competitors are quoting, we try to use that as far as possible, depending upon whatever the cost of the material is, in making our quotations on similar material to the same type of customers.

By Mr. MacIntyre:

Q. Is it your testimony that you take what they are quoting on their price cards to the general trade and are governed by that in making the price that you are to bid, say, to the Féderal Government under seal?

A. General price cards are not the basis of most
4140 of the bids, most of the bids on open bids, particularly on conduit, are off manufacturers' price cards.

Q. But where yours and your competitors' are the same, but nevertheless differ from what they have been heretofore, how do you arrive at your bid in such instances?

Mr. Bozeman: Your Honor, I think that is about the third time, if not the fourth time it has been answered.

Mr. MacIntyre: It still has not been answered.

Mr. Bozeman: He has given you the answer that he can give; he stated that the only answer is that he had no explanation for it. I submit furthermore that it is beyond the scope of the direct examination.

Trial Examiner Norwood: I think he may explain that to us further, if he can.

Objection overruled.

The Witness: I would like to answer it if I understood just what you are getting at.

Trial Examiner Norwood: He said, do you reach that result without selling on the cards?

The Witness: Yes, we use our cost in most cases as a basis for determining selling prices.

By Mr. MacIntyre:

Q. How can you arrive at exactly the same price as your competitors in the submission of bids to public bodies, under seal, without the use of your cards, or quoting card prices?

4141 A. I don't know that I can. There may be instances, but they would be very few if such were the case. I know of no case.

Q. Mr. Johannesen, I call your attention to Respondents' Exhibit 280-Z-7, which shows that the General Electric Supply Company submitted a bid to the Federal Government, that is, the Navy Department—on 11,200 feet of conduit, bidding a price of $620.68, the Graybar Electric Company at the same time submitted the same bid, namely, $620.68, the National Electric Products Corporation at the same time submitted the same bid of $620.68 on the same lot.

A. When was that placed?

Q. That was on May 23, 1939. Will you please explain to us how it was that you arrived at the figure that the

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General Electric Supply Corporation submitted in that instance?

A. Was this bid submitted in New York or Washington please?

Q. I cannot tell.

A. I don't know, of course.

Q. Whether it was submitted here or somewhere else?

A. If it was submitted outside of the New York territory, with which I am familiar, I would have no way of knowing. We wouldn't have submitted the bid.

Q. You do not know whether or not you submitted the bid or somebody else in your company submitted it; is that correct?

4142 A. Unless you can tell me where the bid was submitted, I do not know.

Q. I do know your company submitted it.

A. Unless I know where the bid was submitted, I have no way of answering that question.

If it was submitted in Washington, it would be our Washington house. Perhaps we handled the quotation.

If it were submitted in Norfolk, or some other place, it would be some other district.

Q. In other words, you have no explanation as to why your company, in the submission of such bids, submit them in that way, that is identical with its competitors?

A. No, I don't have any explanation.

Q. Or how the figure that was submitted by it was arrived at?

A. No.

Trial Examiner Norwood: When you refer to cost, did you mean the net price that you paid the producer for the material?

The Witness: That is right.

By Mr. MacIntyre:

Q. And that producer is the General Electric Company?

A. In most cases; on conduit, it is in most cases.

Q. In other words, what you mean by costs there is the price that the General Electric Company charges for

4143 the conduit, is that right?

A. That is right, yes, sir.

Q. You were not attempting to say what it cost General Electric Company to produce the conduit?

A. I have not the slightest idea what it cost.

Q. You testified on direct examination that the differ-

ent branches of the General Electric Supply Corporation are independent. Did you mean that they are independent of the Corporation?

A. I don't think I testified that.

Q. What did you mean by the word "independent"?

A. I don't think I used the word "independent".

Q. It was used in the question to which you answered.

A. I don't think I answered it.

Q. I think so.

A. I don't think that question was answered by me; however, when I speak of independent, I think it was explained there by the attorney that the General Electric Company has distributors, not only on conduit, but on many other products, concerns that are not in any way controlled or owned by the General Electric Company, and when you speak of independent that is what the reference is to.

Q. When you said on your direct examination to the effect that branches of the General Electric Corporation were independent, is it not a fact, Mr. Johannesen,
4144 that what you meant was that one branch was not dependent upon or tied to another branch, as distinguished from any thought that they are independent of the home headquarters of the General Electric Supply Corporation?

A. I see what you are getting at. The question was asked in connection with the districts.

Q. That is right.

A. I think I said we have 28 districts, and approximately 105 warehouses scattered around the country.

Q. That is right.

A. All these districts operate more or less independently.

Q. Of each other?

A. Of each other, and of the headquarters organization at Bridgeport.

Q. Is it your testimony that these 28 districts are not under the jurisdiction of the headquarters at Bridgeport?

A. I didn't say that. They are under the jurisdiction of headquarters at Bridgeport, which is a national headquarters organization, but the district management in operating the business in the different territories of the country are given pretty much leeway and couldn't possibly operate completely under the jurisdiction of the headquarters organization.

Q. But they are still not independent of the headquarters office, are they?

4145 A. No.

Q. You did not mean to imply that by your testimony here?

A. Not at all, sir.

Q. In fact, instructions are received from the headquarters office by the managers of these 28 district branches as to pricing policies, is that correct?

A. No, not from the headquarters of our organization.

Q. Each of the 28 men determine prices themselves and price policies?

A. Yes, sir.

Q. And what prices they are going to bid?

A. That is right.

Q. Without any restraint or any suggestion or any instructions from Bridgeport?

A. That is correct.

Q. Did you ever discuss with anyone at Bridgeport the policy for your district?

A. Prices to quote?

Q. Yes.

A. No. You are speaking now of the Supply Corporation?

Q. Yes, we are talking about the Supply Corporation.

A. No, sir; never did.

Q. Who is your superior in the General Electric Supply Corporation?

A. J. L. Busey is the president of the Corporation.

4146 Q. And he has never discussed prices with you?

A. That is right.

Q. Have you been told by Mr. A. E. Newman of the General Electric Company that you were expected to live up to your contracts with the General Electric Company in quoting the prices provided for in those contracts with the General Electric Company?

A. Not directly.

Q. But your understanding is that you do that?

A. Generally the understanding was that.

Q. Can you say whether or not there was any different understanding on the part of any of the other district managers of the General Electric Supply Corporation?

A. I can't speak for them; I can only speak for myself. But, as far as I know, there was no different understanding, though.

Q. Is it your testimony, Mr. Johannesen, that the General Electric Supply Corporation in its sales of conduit—that is, rigid steel conduit—sells approximately an equal amount of conduit manufactured by others than the General Electric Company as it does of the conduit manufactured by the General Electric Company?

A. That is not my testimony, and it is not my testimony now.

Q. What is the proportion of conduit?

4147 A. I have no way of knowing, and it is a very small percentage of the total that is sold of other manufacturers' make. In conduit, the majority of the conduit sold by the General Electric Supply Corporation is of General Electric make because they have their own manufacturing plant.

Q. When you testified on direct examination that of the sales volume of the General Electric Supply Corporation as much as one-fourth to one-fifth of all sold was manufactured and purchased from others than the General Electric Company, you were not referring solely to conduit, were you?

A. I think I said from one-third to 40 percent, and I was referring to our general business total, not only conduit, but our general business.

Q. That same proportion would not hold true with respect to conduit?

A. No, it wouldn't.

Q. What proportion would be true with respect to conduit?

A. In speaking for New York district, since I have been there, I would judge—I would estimate that possibly 90 percent of our conduit sales were General Electric make; that is an estimate.

Q. Do you know why the other 10 percent was not General Electric?

A. There might have been several reasons; one might have been that we couldn't get delivery; another

4148 might have been we couldn't get a price to meet competition; another one might have been that the concern buying the conduit might have specified some other manufacturer's make, and that General Electric conduit would not be acceptable in that case, and we were able to make an arrangement with the conduit manufacturer to buy his product.

Q. Is it your testimony, Mr. Johannesen, that the Bureau of Supplies and Accounts of the Navy Department never requested the General Electric Supply Corporation for bids F. O. B. mill?

A. I know of no case.

Q. When you testified this morning to the effect that the General Electric Supply Corporation had never received requests for prices F. O. B. mill, were you excluding or including the Bureau of Supplies and Accounts of the Navy Department?

A. I was making a general statement of all types of customers, so far as I know, including them.

Trial Examiner Norwood: You were including them?

The Witness: Yes, sir.

By Mr. MacIntyre:

Q. They never made such requests?

A. So far as I know, they never made any requests.

Q. What do you know about them?

A. Very little, except what I have said.

Q. Do you know that they did not, or are you just stating that so far as you might possibly have some
4149 knowledge, you do not know anything about it?

A. I cannot state any more than what my knowledge is.

Trial Examiner Norwood: Do you have any information particularly about those Government bids?

The Witness: Only what I stated previously, that on any bids that we make in New York, open bids, whether they are Navy Department or any other Department, and where the amount involved is substantial, that I personally, since I have been back in New York, have followed this quite closely, and as far as I know, I don't recall any instance where we have been asked to quote F. O. B. the factory.

By Mr. MacIntyre:

Q. That is, none of those have been brought to your attention?

Mr. Bozeman: I object to the question on the ground it is repetitious.

The Witness: It has not been brought to my attention in so far as I have seen. That is the only reason I can make that statement.

By Mr. MacIntyre:

Q. How did your operating cost committee of the National Electrical Wholesalers Association secure information relating to the distribution costs on conduit?

A. In the same method used in determining costs on other products that were studied by the cost committee.

Q. From whom was that information secured?

4150 A. From as many houses that were members of the National Electrical Wholesalers Association that were able to compile information and furnish it.

Q. Did Mr. Drury furnish some of that information to you?

A. I don't know. I don't know who submitted it, because that was handled by the headquarters office, or the National Association, so the individuals who submitted the information and the information submitted was not available to the general committee. It was tabulated, as far as I recall, by the headquarters office of the Association.

Q. How could you testify on direct examination that none of the members of the operating cost committee of the National Electrical Wholesalers Association had collaborated with or discussed with members of the conduit committee costs relating to conduit?

A. I don't think that I made that statement. I can only make a statement in so far as I was concerned, and I think that was the question asked, was it not?

Q. Any testimony that you gave on that point on direct, then, should be limited to yourself, rather than attempting to answer for the committee, is that correct?

A. I might say as either chairman of the committee or as an individual, I can't answer for other members of the committee.

Q. Do you recall that during the course of meet-

4151 ings of the operating cost committee of which you were chairman, that discussions took place relating to the effect on any wholesaler or jobber of selling below cost?

A. No.

4152 Q. What was the purpose, Mr. Johannesen, of the operating cost committees in securing information and making reports on distribution of wholesale electrical supplies?

A. The purpose was to try and determine as accurately as possible cost of warehousing and selling the different

commodities that go to make up an electrical wholesaler's business, and in compiling that information the purpose was to give that information to members of the Association, so that they could with that information before them try and make studies of their own business, and if they were inefficient, or better than the study showed, it would give them an opportunity of having a pretty good knowledge or satisfaction in knowing whether they were good or bad.

Q. That is, of knowing what was good or bad?

A. Whether they were good operators or bad operators, in accordance with these studies of average figures
4153 presented.

Q. What did you hope that they would be able to accomplish for themselves or anyone else by comparing the cost information which you submitted to them with their own cost, the actual costs which they were incurring?

A. The committee's hope was that they would learn for themselves what their costs were. We have as members of the Association many houses, some of which are comparatively small—I mean, have a small volume of business—and many of them do not have, as far as I know, complete records or accounting methods that would enable them offhand to know that, but when they have some record of this type it would give them an opportunity with the information given by the cost accounting committee of methods of procuring that information which they did not have before.

Q. It was then your thought and the thought of the committee and the hope of the committee, that these individual members—small members—would take the information as to methods in determining costs and compare that with the result that they had been obtaining in determining their actual costs through the methods which they had been using; is that correct?

A. It would apply to any concerns that were members of the Association, large or small, and in securing a method or in finding a method they could make studies of their own operations. The hope was that they would learn for themselves what these different costs of handling the
4154 business were.

Q. Amending the question that I asked you to include "large and small" or "large or small", what would be your answer to that question?

Mr. Austin: May I ask that Mr. MacIntyre, instead of trying to incorporate by reference to previous questions, restate them, so he will not confuse the witness.

Mr. MacIntyre: I ask that the question be read to the witness. Let us read the question to the witness.

Trial Examiner Norwood: Read the question, Mr. Reporter.

(The question referred to was read by the Reporter.)

Mr. MacIntyre: The question which the reporter has been asked to read has not been answered, so I ask that the witness answer it.

Trial Examiner Norwood: You answered one question with respect to small business, did you not?

The Witness: I made the statement previously, only I used the words "small concerns" in referring to the fact that there were many small concerns, that because of their size and type of organization had no standard methods of accounting, or determining their costs on many items. I think that is what I stated.

Mr. MacIntyre: Now, that was what the witness stated. I asked that it be read to him.

4155 Trial Examiner Norwood: Read the question.

(The record referred to was read by the Reporter.)

Mr. MacIntyre: Can you answer that question?

Trial Examiner Norwood: Did you understand that question?

The Witness: No, I do not.

Mr. Austin: If your Honor please, that question was answered.

Trial Examiner Norwood: Was it?

Mr. Austin: Yes, sir. And then Mr. MacIntyre asked to amend that question to include "large and small"; let him now answer that.

Trial Examiner Norwood: Restate your question.

Mr. MacIntyre: That question has never been answered, but I will ask another question.

By Mr. MacIntyre:

Q. Is it your testimony, Mr. Johannesen, that it was your hopes and the hope of the committee, and the thought of the committee, that the information which you and the committee gathered, compiled, and passed out to the individual members, large and small, of the National Electrical Wholesalers Association, that they would then take

the information concerning methods of determining costs, compare it with the methods which they had been using, and the results which they had been getting through
4156 the use of their own methods; is that correct?

A. I think it is safe to say that with all of the different questions in the question, that it would be pretty safe to say yes.

Q. That that was what you intended to have them do, to compare this information in that way?

A. I think I stated that what the thought of the committee was, that by determining a method, that would enable these concerns, large and small, to study their own business, and determine their costs of handling the different commodities which they sold. Now, if you got that impression from my answer, and if it is the same as you thought, that is it.

Trial Examiner Norwood: You wanted to give a uniform method to large businesses as well as small ones, is that right?

The Witness: We wanted to determine a method by which we could accurately and definitely determine the different items of expense that went into the handling of the many commodities that wholesalers sell, that was to large concerns and small concerns.

By Mr. MacIntyre:

Q. Mr. Johannesen, will you now outline to us for the record the differences in the methods which you proposed to the members of the National Electrical Wholesalers Association, from the methods which were at that
4157 time being used by the General Electric Supply Corporation in determining its costs.

4159 The Witness: The Supply Corporation, so far as I know, and I have been with it many years, did not have accurate records or figures that would enable any of its managers to know definitely what its cost of handling these different commodities was.

Mr. MacIntyre: I move that the answer be stricken. It is unresponsive; and I ask that the witness be requested to answer the question.

Trial Examiner Norwood: The motion is denied.

Proceed.

By Mr. MacIntyre:

Q. Mr. Johannesen, will you please now state for the record the differences which you can recall in the methods which your committee submitted, or outlines or statements of methods which your committee submitted to the members of the National Electrical Wholesalers Association for their use and consideration, from any methods which were being used at that time by the General Electric Supply Corporation?

Mr. Austin: If Your Honor please. First, I object to that question because it is precisely the same question which was answered over my objection immediately prior to this one. Secondly, I object to it on the ground that it assumes a state of facts not in the record.

Mr. Bozeman: In the third place, Your Honor, it seems to me the question goes to the contents of these
4160 documents which I understood a moment ago you did not understand Mr. MacIntyre was inquiring into.

Trial Examiner Norwood: Objection overruled.

Answer the question.

The Witness: Ask it again, please.

Trial Examiner Norwood: Read the question, please Mr. Reporter.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Tell us about the differences, if any.

By Mr. MacIntyre:

Q. That is, enumerate the differences.

A. I think I stated previously, in trying to answer that question, that, so far as I know, the General Electric Supply Corporation did not have methods, nor did other wholesalers, so far as I know, have methods that would enable them to make a cost study of this character.

Trial Examiner Norwood: The difference is in having some methods, and no method at all?

The Witness: Practically.

By Mr. MacIntyre:

Q. Is it now your testimony, Mr. Johannesen, that at that time the General Electric Supply Corporation was using no methods in cost determination of its sales?

4161 A. That isn't what I was saying at all, sir.

Q. Now, I am asking you what the difference is,

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if any, between the methods which it was then using and the statement of the methods which you submitted to the members of the National Electrical Wholesalers Association?

A. This study goes into details pertaining to warehousing, interest on investment, freight, trucking, sales expense, service expense, interest on investment—I think I mentioned that before—

Q. Yes.

A. Display expense, rent, light, heat, telephone service, and all of the other items that go to make up the total expense of an electrical wholesaler's cost of doing business. About the only information that the Supply Corporation had, or attempted to get prior to this comparison, was a general overall expense of handling the business.

You know the cost of expense of all commodities, without attempting to break down the cost of handling each commodity.

I am trying to answer your question with the correct information. It might be better if you would ask another question.

Trial Examiner Norwood: The chief difference was the breakdown to various commodities?

The Witness: To determine the cost of selling and handling different commodities. We had not made 4162 that sort of a study previously, so far as I know.

By Mr. MacIntyre:

Q. Let us take one of those items. Will you explain what difference, if any, there was at that time in the use of methods by the General Electric Supply Corporation in computing and allocating as a cost element interest on investment, from the principle or method which was included in the statements which you submitted to the members of the National Electrical Wholesalers Association, as to what would be a good method in handling that cost element, namely, interest on investment?

A. I tried to state before that, so far as I know, we had nothing—we had never attempted a complete breakdown by commodities, but in this study we used arbitrarily six percent interest on investment.

So far as I know, at different times, the General Electric Supply Corporation in computing or considering cost of doing business has had to consider a return on invest-

ment, at one time eight percent; at another time, six percent; and I think today it is less. I am not sure that answers your question.

Q. At the time that it submitted this statement, though, to the members of the National Electrical Wholesalers Association was it not at that time treating interest on investment at six percent?

A. I think so. I couldn't say definitely, but I think so.

Q. And that is what it submitted as a proper one

4163 to be considered by the members of the National Electrical Wholesales Association?

Mr. Austin: If Your Honor please, again I object to the question on the ground that it assumes a fact not shown in the record, which is the assumption that G. E. Supply Corporation submitted this to the National Electrical Wholesalers Association.

Mr. MacIntyre: Mr. Austin is correct there. I should have said, when the cost operating committee of the National Electrical Wholesalers Association when you were chairman, submitted to its members, that is, you proposed or at least submitted to them for their consideration; is that correct?

The Witness: We, in determining costs of handling any commodity, use six percent interest on investment as a basis of determining that item of cost.

By Mr. MacIntyre:

Q. That is, interest or investment?

A. And we also refer in our report to the fact that where certain commodities were handled on a consignment basis, the members in determining what is their actual cost on handling of those commodities could, of course, eliminate from consideration interest on investment.

Q. But the interest on investment which was outlined in this statement was six percent?

4164 A. That is right, sir.

Q. And that is what the General Electric Supply Corporation at that time was using in the determination of its costs?

A. I am not sure of that, as I said before, but I think it was.

Q. And will you outline for the record here any difference in the manner in which the General Electric Supply

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Corporation at that time was handling or allocating in its cost determination the element known as display expense, from the manner in which it was set up and suggested in the statement that your committee submitted to the members of the National Electrical Wholesalers Association?

A. So far as I know, no district of the Supply Corporation had any accurate knowledge or information whereby they could allocate display space, display expense; that is display space used for that purpose. Some of our houses had display rooms where they sold appliances, like refrigerators, electric ranges, and things of that kind, but there are many of our houses that did not handle those commodities at that time, and there was no occasion for display space. They did not have it.

Q. But you knew at that time that some of the branches of the General Electric Supply Corporation did have display space and were allocating it as a part of their total cost in determining their total cost?

4165 A. I did not know how they were doing it. We had no definite method, as far as I know, of determining it; but with the hope of trying to clear that point, I might say that at that particular time when this report was submitted, the 1937 report, I was—my responsibility was to visit all of our houses, except the Pacific Coast, and so far as I know most of our houses, I am speaking now of the Supply Corporation, didn't attempt to divide or determine the expense of display space. They might have set up for accounting purposes the amount of floor surface used for display purposes, the same as we assigned the amount of floor space used for office purposes as compared with warehouse purposes; but otherwise, as far as I know, we didn't attempt to segregate it.

Q. But you do know that some allocation was made for display expense?

A. In some cases only not as a general thing.

Q. But by certain units of the General Electric Supply Corporation?

A. A certain amount of floor space was set aside in connection with, usually, office space; generally display space was assigned as office space, and it was put into that class, and a few cases separately.

Q. Do you know of any difference in the way that the General Electric Supply Corporation determined cost in

the form of interest on merchandise from the way in
4166 which it was suggested that it could be determined in
the statement that your committee submitted to the members of the National Electrical Wholesalers Association?

A. Interest on merchandise, or interest on investment?

Q. Interest on investment in merchandise?

A. In merchandise, the same amount would apply there as previously, that is, as far as I know, six percent was assigned in both cases, both interest on investment in merchandise and interest on investment in receivables, but so far as I know, or recall, that was, I believe, the figure used by the General Electric Supply Corporation in determining that.

Q. Do you recall an element of cost that was suggested in your reports, that is, the reports of your committee, entitled Credit Losses?

A. Oh, yes.

Q. What difference was there for treating that element of cost in your report and the way that the General Electric Supply Corporation had been treating it as an element of its cost?

A. That report, as I recall it, by the cost study committee, called attention to the fact that credit losses varied all the way from half of one percent on sales to as high as two percent on sales, from the average figure we received from the houses reporting. The Supply Corpora-
tion districts each have their own accounting system,
4167 and the credit losses vary in proportion to the dis-
trict in which they operated very much as I just stated, possibly from half of one percent to as high as two percent.

Q. They fall within the limits of the consideration of credit losses which the cost committee gave?

Trial Examiner Norwood: That is, the credit losses of the General Electric Supply?

The Witness: No we have had cases where credit losses have been in excess of two percent, and we have had cases where credit losses have been less than one-half of one percent for a certain year, depending upon how lucky you were.

By Mr. MacIntyre:

Q. But the committee suggested two percent to one-half of one percent as tolerance limits?

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A. No, I don't think they used that term, they stated the information, from compiling the data there, that the credit losses varied from a half of one percent to two percent.

Q. That is, the members of the committee stated that?

A. I think that is in the report of the committee, and that was on the reports submitted from the various houses that reported; that is my recollection.

Q. What difference was in the manner in which the General Electric Supply Corporation had treated as a cost element, telephone, telegraph and stationery supplies,
4168 and the method and manner in which it was suggested in the report of your committee to the members of the National Electrical Wholesalers Association that such items should be treated?

A. The same difference in telephone and telegraph expense applies as I just tried to explain in connection with credit losses. Each district has its own accounting system, and telephone expense, telegraph expense, trucking, and all of these other items vary by districts, and to go a step further it varies by warehouses that are operating in certain districts.

Q. Mr. Johannesen, I may call your attention to Respondents' Exhibit 275, and particularly to page 8, which is designated as Exhibit "A".

Will you explain what those figures are in the column, and how they were arrived at, and what they mean?

4170 Mr. MacIntyre: May I have the question read?

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: Exhibit "A" has a heading here "Groups and Items of Operating Costs," and the first classification under that is "Investment in Merchandise," and over to the right, where the figures are shown, it states "Percentage to Total Sales for 1936, or Latest Fiscal Year," the first item is interest at six percent, the next is "Insurance," "Taxes," "Repair Service," and "Marked Down Losses."

The next classification is "Warehousing," and that classification includes "Storage," and that is broken down by "Rent for Warehouse Space Only," "Light," "Heat," "Power," "Janitor Service," and other items of that class.

4171 The third item in that classification is "Depreciation," "Repairs," "Furniture and Fixtures."

By Mr. MacIntyre:

Q. Now, what are the figures on the last column, opposite those items?

A. The figures shown here, the first item of cost shows .68.

Q. What does it mean, that is, .68?

A. It means 68/100th percent, as it states right here, cost to total sales for 1936 of that item, based on the reports that were submitted to the cost accounting committee for that particular year.

Q. That is an average, is it not?

A. It is average, oh, yes.

Q. It is an average percentage, and that is an element or cost figure in terms of percentage to total sales, is it not?

A. That is the way it stands here, yes.

Q. Is it not true of each and every figure that appears on that with respect to the item on the line opposite it?

A. That is right, based on the reports that were submitted by the different houses that sent it reports.

Q. Not one of the figures there represents any percentage comparable to any dollars and cents actual cost incurred by anyone, does it?

4172 A. To determine these percentages you had to have in the first place actual sales, and those figures pertain to sales, and, secondly, you had to have actual figures to show the cost of these different items.

Q. But this is an average of the whole, is it not?

A. This is an average of the whole.

Q. And is not actual as to any, is it?

A. Yes, actual to each one.

Q. Only in so far as it is an average of all, is that not true?

A. An average of all that were submitted, that is right.

Q. But taking some one of the operators and his cost, it does not necessarily mean that it would meet and equal the comparable item of his cost at all, does it?

A. It may equal; it may be less, and it may be higher. An average, that is what I said it is.

Q. And that is the philosophy behind all of that work, is it not?

A. I don't know just what you mean by the philosophy. We did not try to philosophize on this thing, we tried to get actual facts.

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Q. It was your thought to get an average, and that was the thought that prevailed through all of your work on this committee, was it not?

A. The thought was to get accurate information
4173 from each concern that submitted figures, and when you consulted those figures you naturally have an average figure.

Q. And that was the only thing that your committee was attempting to do, was to secure that average figure?

A. No, we were not; we were trying to get some accurate method whereby we could determine—each house could determine for itself what the costs of handling the different commodities were, which is as I explained previously.

4174 Trial Examiner Norwood: Come to order, please. Proceed, Mr. MacIntyre.

By Mr. MacIntyre:

Q. Did your committee ever report to the members of the National Electrical Wholesalers Association any cost information other than in the form of an average as to any element on cost?

A. That is the report, and that is the only report from that standpoint as far as I know that was submitted by the cost committee, and those figures are, as I said previously, average figures that were determined after compiling the information sent through by the different concerns that submitted the information.

Q. Are we correct in our understanding, then, that all of the information that your committee submitted at any time was expressed in terms—that is, as to each item of cost—in terms of percentage to the total sales which was one hundred percent and then in the nature of an average and in no other way; is that correct?

A. That is about correct, if I understand the question.

Q. Who named all the members of the operating cost committee of the National Electrical Wholesalers Association?

A. So far as I know, the members of the committee—cost committee you are speaking of?

Q. Yes.

4175 A. Were named by the chairman of the Association.

Q. And during the period of time when you were chairman of the Association did you name all of them?

A. No, because the cost study committee or cost accounting committee has been in force and has not been changed—never been discharged since the appointment in 1932 or 1933, so that there has been no occasion to name a new cost committee.

Q. Who named the members of the sub-committee of the operating cost committee?

A. The committee when it met the first time or the second time determined that to compile all the data and figures that it could be done to better advantage by a sub-committee, a smaller committee, and men who were qualified to do that type of work so that it automatically fell, more or less, to the three men on that committee who were acquainted with that type of work, and that was the purpose originally in appointing those men on that committee, because they were experienced in that type of work.

Q. And the three members of the operating cost committee did in fact, then, actually name the members of the sub-committee?

A. It was six or seven members of the committee and the six or seven members determined on the three that were selected for that purpose.

Q. And named them?

A. And named them, that's right.

4176 To the best of my recollection, I think that is correct.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Mr. Austin.

Redirect Examination by Mr. Austin.

Q. Mr. Johannesen, there is one point in connection with Mr. MacIntyre's cross-examination I would like to try and clarify.

You were discussing G. E. Supply Company's government bids, and you stated on several occasions that in arriving at the amount of your bids you took your cost.

Mr. MacIntyre asked you if that cost was G. E.'s price and your answer was in the affirmative.

I would like to ask you if that term "cost" as used by you was the amount G. E. charged G. E. Supply Co. or the amount G. E. charged on its card prices—published card prices?

A. When I referred to cost, I think, as the Examiner

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brought out there in his question, I referred to the cost that we paid the manufacturer.

Trial Examiner Norwood: That's right.

The Witness: After the compensation which they allowed on conduit. And when I spoke of price at the same time, I spoke of price that we quoted to the customer or the price that the General Electric Company charged
4177 us, and which is really our cost.

By Mr. Austin:

Q. But the term "cost" as you used it in referring to your figuring of bids was the price cost?

A. That's right.

Q. Now, in your cross-examination you stated in response to a question of Mr. MacIntyre's that you had no knowledge of who submitted what figures because they went to the head office of the Association and were there tabulated.

Now I would like to ask you if you or the members of your operating cost committee ever saw or knew what the actual costs were of any individual company other than your own submitted in response to questionnaires sent out?

A. No. They never did, as far as I know.

Q. So that the head office of the Association kept anonymous the companies who supplied certain figures?

Mr. MacIntyre: I object to the question. It is an argument.

Trial Examiner Norwood: No.

Mr. MacIntyre: And, furthermore, it is leading the witness unnecessarily.

Trial Examiner Norwood: Well, he is starting out to lead there, but he may show whether or not the individual costs of one member were made available or submitted to other members.

4178 Mr. Austin: I will restate the question.

I think Mr. MacIntyre is right. That was leading a little.

By Mr. Austin:

Q. Mr. Johannesen, were actual costs of individual companies ever in the possession of the operating cost committee?

A. They were not, so far as I know.

Q. Now, let me ask you if any information reached

the operating cost committee with respect to methods of cost accounting used by individual companies submitting figures in response to questionnaires?

A. Did not. We had no way of knowing that.

Q. Now, let me ask you if these exhibits 275 and 272—and I show them to you (counsel hands documents to witness for examination) contain any suggestions as to methods to be used in cost accounting?

Mr. MacIntyre: I object.

The documents are in evidence. They show what they contain.

Trial Examiner Norwood: He may tell us that. It will save some studying.

The Witness: So far as I know, they do not.

By Mr. Austin:

Q. Mr. MacIntyre brought out at some length the fact that I tried to bring out on direct examination of
4179 Mr. Byers yesterday, and he objected to it, that these were average cost figures to total sales.

I would like to ask you if in sending these reports to members it was your intention—your own mental attitude now—that the members receiving such costs—average costs—should open the report, turn to page 8, and finding 68/100th of 1 percent as interest, should thereafter arbitrarily charge, in the operation of their own business, 68/100th of 1 percent to interest without any relation to what their own actual costs were?

Mr. MacIntyre: I object.

It is an improper question both as to form and substance.

Trial Examiner Norwood: He may tell what his intention in forwarding this report was—

The Witness: It was not.

Trial Examiner Norwood: —to the other persons.

The Witness: It was not in answering the question.

Mr. Austin: That is all I have.

Mr. Bozeman: Mr. Examiner, I have a couple of questions, please.

Trial Examiner Norwood: Mr. Bozeman.

By Mr. Bozeman:

Q. Mr. Johannesen, before the Supply Corporation submitted any public bids, would you have any conversa-
4180 tions or discussions or meetings with any of your competitors regarding the proposed bid?

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A. We would not.

Q. Did you ever have any such conversations, discussions, or meetings with any of your competitors?

A. We did not.

Mr. Bozeman: That is all.

Trial Examiner Norwood: Thank you, Mr. Johannesen.

Mr. Austin: The witness is discharged?

Trial Examiner Norwood: Witness is discharged.

(Witness excused.)

Trial Examiner Norwood: Call your next witness, please.

Mr. Austin: Mr. Drury.

WALTER J. DRURY, was thereupon called as a witness on behalf of the Respondents and, having been first duly sworn, testified as follows:

Direct Examination.

Trial Examiner Norwood: Please give your full name to the reporter.

The Witness: Walter J. Drury.

By Mr. Austin:

Q. Mr. Drury, your full name is in the record, is it not?

A. It is.

4181 Q. What is your present position, sir?

A. District manager and vice-president of Graybar Electric Company.

Q. How long have you been employed by Graybar?

A. I have been employed by Graybar Electric Company and its predecessor, the Western Electric Company, for thirty-seven years.

Q. Thirty-seven, you say?

A. Thirty-seven; yes.

Q. Can you state very briefly for the record your background of employment and experience in the Graybar Electric Company; I mean by that, the type of position you have held and the type of work you have done?

A. You mean from the very beginning with the Western Electric Company?

Q. No, from the beginning of your Graybar days?

A. Well, the last—since 1923 I have been district manager, located in New York, and I have charge of the company's business in the State of Connecticut, all of New York State, and about two-thirds of New Jersey, north of the Trenton line.

Is that sufficient?

Q. That is since 1923?

A. Since 1923.

Q. I think that goes back far enough.

4182 How long have you been a representative of Graybar Electric Company in the N. E. W. A.

A. Since about 1914.

Q. And what positions have you held in N. E. W. A.?

A. Well, I have been a member of the wire committee, on the conduit committee, chairman of the wire committee, chairman of the conduit committee, and chairman of the executive committee.

Q. By chairman of the executive committee, you mean what has been referred to in the record here prior to this as chairman of the Association?

A. Yes.

Q. Have you in your various capacities as an employee of Graybar and particularly in your work in New York dealt with the purchase, sale and distribution of rigid steel conduit?

A. I have.

Q. And your experience in that connection has been constant over the years you have been here in New York?

A. I should say yes, it has been uninterrupted.

Q. You stated you served as a member of N. E. W. A.'s conduit committee and as chairman of the conduit committee?

A. I did.

Q. Were you a member of N. E. W. A.'s conduit committee from May 1936 to July, 1940?

A. I think so.

4183 Q. Can you tell us for what period of time in that four years span you served as chairman of the conduit committee?

A. My recollection is I was chairman in 1936 and 1937.

Q. Can you remember whether you served as acting chairman of the conduit committee in May of 1938?

A. I think I did.

Q. I show you Commission's Exhibits 40-A and B,

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39-A, 39-B, and 39-D, and ask you if you wrote each of the said reports, the first three as chairman of the committee, and the fourth one as acting chairman of the conduit committee?

(Counsel hands documents to witness for examination.)

A. Yes, I did.

Q. Commission's Exhibits 40-A and B and 39-A indicate that the committee recommended the discontinuance of manufacturers' local warehouse stocks of conduit.

Will you tell us why the committee, under your chairmanship, made those recommendations?

A. Well, this report I have in front of me says last year your committee recommended "discontinuance of manufacturers' local warehouse stocks for the reason, among others, that sales and deliveries out of these stocks through warehouses or through agents result in unfair price discrimination against those wholesalers who do their own warehousing and otherwise perform the full distributing service for the manufacturer."

4184 That, I think, was our principal reason.

Q. Can you add any other reason to that?

A. Well, it was unfair price discrimination against those who did do the job themselves and in our discussions with manufacturers back about that time, which was pretty close to the bottom of the depression, we were told that the sales from these local warehouses were so small that the cost of—

Mr. MacIntyre: Now I object to him stating what manufacturers told him. Manufacturers have been here and have been on the stand and they could have stated what the facts are if they had so desired. And to have this man come in and tell us what someone told him were the facts is an improper way to get it in. I object.

Trial Examiner Norwood: It is going entirely to the state of mind.

Mr. Austin: If Your Honor please, what we are trying to do is to explain what was in the mind of this witness.

Trial Examiner Norwood: Yes.

Mr. Austin: When he wrote this report.

Trial Examiner Norwood: It is not going to the truth of those statements. It is going to what they received and acted on.

Overruled.

By Mr. Austin:

4185 Q. You can go ahead.

A. We were told that because of the small amount of sales out of these local warehouses, the costs in some instances amounted to as much as 25 percent of the sales, and we knew that the electrical wholesalers could do it much more economically. We, therefore, felt discontinuance of the warehouses would be an economic advantage to the whole industry.

Q. In your report of September 1936, which is this report (counsel hands document to witness for examination), you stated in the first paragraph that "manufacturers have discontinued local warehouse stocks in all sections of the country except the Pacific Coast."

A. Yes.

Q. Will you tell me upon what information you based that statement in your report?

A. This was based upon the information we received at the meeting of the conduit committee at which there were a number of manufacturers present. And it was information given by the manufacturers and the wholesalers present at the meeting.

Q. In other words,—

A. In other words, it was a conclusion reached because of the conversations at this meeting.

Q. And that was the conclusion which you drew when you wrote the report?

4186 A. That's right.

Q. Based on what you were told at the meeting?

A. Which afterwards proved to be erroneous.

Mr. MacIntyre: I move to strike the last statement. There has been no foundation laid to show the witness made a survey for the purpose of determining whether the warehouses were discontinued and, furthermore, it was not responsive to the question.

Trial Examiner Norwood: Read the question and answer, please, Mr. Reporter.

(The question and answer referred to were read by the Reporter.)

Trial Examiner Norwood: I do not see why he cannot tell us that.

The motion is denied.

Go ahead.

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By Mr. Austin:

Q. When you stated in your report of September 1936, Commission's Exhibit 39-A, that manufacturers had discontinued local warehouse stocks "in all sections of the country except the Pacific Coast," did you mean that all warehouse stocks in the United States except on the Pacific Coast had been discontinued or did you mean that you had heard of the discontinuance of certain local warehouse stocks "in all sections of the country except the Pacific Coast"?

4187 Mr. MacIntyre: I object to the question, if Your Honor please.

Trial Examiner Norwood: Sustained.

Mr. MacIntyre: And I ask that counsel for the respondents now be instructed not to follow that question with one which is not leading on the same point. The harm has been done now.

Trial Examiner Norwood: I will say I hardly think it is sufficiently harmful to exclude it.

He may tell us what he meant by that.

What did you mean by that statement there?

The Witness: In this exhibit 39-A?

Trial Examiner Norwood: Yes.

The Witness: We meant to tell the members of the Association that according to the information we had available—

Trial Examiner Norwood: Yes.

The Witness: Local warehouse stocks had been discontinued in all parts of the country except the Pacific Coast.

Mr. Austin: Mr. Reporter, will you please read the question?

Trial Examiner Norwood: Read it.

(The question referred to was read by the reporter.)

By Mr. Austin:

4188 Q. After recommending in Commission's Exhibit 39-A that manufacturers' local warehouse stocks be discontinued, did your committee, or to your knowledge did N. E. W. A., take any action with respect to that recommendation?

A. No.

Q. Based on your knowledge and experience in the purchase, sale and distribution of conduit, will you now state whether at any time all manufacturers' local warehouse stocks of conduit has been discontinued except on the Pacific Coast?

A. Well, I do not pretend to have complete knowledge, but I am told there are—

Mr. MacIntyre: Well, I object to the witness continuing to tell us what somebody has told him.

Trial Examiner Norwood: Well, anything you found out in your official capacity you may tell us that. But just simply talk would be excluded.

The Witness: Well, I did not go around and see these warehouses.

Trial Examiner Norwood: Did you make any investigation to verify any statements that came to you on that subject?

The Witness: Yes, I did.

In one particular case I inquired, but I never went to the warehouse. I never saw it.

Trial Examiner Norwood: You found out that there
4189 was one that had not been discontinued?

The Witness: It never had been discontinued in New York City.

Trial Examiner Norwood: Then you may tell us about any others you know about.

The Witness: I have not seen any of them.

By Mr. Austin:

Q. Mr. Drury, I note that the reports of the conduit committee, Commission's Exhibits 40-A and B, and 39-A (counsel hands documents to witness for examination) made certain recommendations to correct waste and unfairness of building protection contracts.

I would like you to explain the situation existing in the year 1936 which caused you, as chairman of the conduit committee, to include in your reports the paragraphs relating to building protection contracts.

A. You said those were 39-B?

Q. 40-A and 40-B and 39-A.

A. "To correct the waste and unfairness in building protection contracts."

Do you want me to tell you what?

Q. I would like you to tell us, after reading the recommendations in your reports, what the situation was at the time that caused you to put those recommendations in your reports.

4190 Mr. MacIntyre: That is a rather indefinite question. What the situation was.

I suggest it be made more definite and clear.

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Trial Examiner Norwood: I think it is a legitimate approach.

Objection overruled.

The Witness: The best description I could give of it was it was chaotic in the conduit industry.

By Mr. Austin:

Q. What do you mean by "chaotic" in connection with building protection contracts?

I would like you to explain that, please.

A. It was chaotic because of the building protection contracts.

Trial Examiner Norwood: What was the condition that you wanted to correct?

The Witness: Well, there was—you never could tell—we, as wholesalers, could never tell anything about what prices were to be, nor what costs were, although, according to the published prices, the prices of all manufacturers were the same pretty much, and, therefore, the cost to the distributor would be pretty much the same, but because of all these building contracts extending back over a period of time and the multiplicity of those contracts, at times there were a number of contracts in force on the same building project and many times there
4191 were contracts in force on projects which were not in existence, and the wholesalers or manufacturers who had contracts going back to periods when they were taken on low cost, had costs which were very much below the costs of the majority of other wholesalers. And those wholesalers who had the benefit of those contracts could, therefore, quote much lower prices than others. The discrepancy at times was as much as 33⅓ percent.

Does that answer your question?

Mr. Austin: Yes.

By Mr. Austin:

Q. Now, after making the recommendations shown in Commission's Exhibits 40-A and 40-B and 39-A, with respect to building protection contracts, will you state whether or not the conduit committee or N. E. W. A. ever took any action with respect to such recommendations?

A. No.

Q. Did you, or to your knowledge the conduit committee of N. E. W. A., ever have anything to do with the

preparation or distribution of forms of specific building job contracts?

A. No.

Q. Did you or to your knowledge N. E. W. A. ever have anything to do with the investigation of specific building job contracts?

A. No.

4192 Mr. MacIntyre: I object. It is a matter of conclusion. He has told us, if Your Honor please, about some things he has done and now they ask whether or not it had the effect of causing investigations. It is a mere conclusion.

Trial Examiner Norwood: That is not the question.

Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: You object to that question?

Mr. MacIntyre: I objected, but he answered before I could get up.

Trial Examiner Norwood: State your objection, then.

Mr. MacIntyre: He is being asked whether he had anything to do with it or not, and that certainly goes to the question as to whether or not this action which the evidence shows he did take had any effect at all upon or led to or caused in any way investigation of contracts. It is a mere conclusion. That is all.

Trial Examiner Norwood: Off the record, please, Mr. Reporter.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

4193 Mr. Austin: Will you strike that question, please?

Trial Examiner Norwood: The question is withdrawn.

By Mr. Austin:

Q. Did you ever investigate a specific building job contract?

A. Did I ever personally?

Q. Yes, investigate?

A. Investigate?

Q. Yes.

A. Well, I have investigated some of our own building contracts.

Q. Did you ever go out in the field and try and find out how many contracts existed on a particular job?

A. No.

Q. Who the manufacturers were that supplied the contract, whether they were over specifications or not on the job and then report back to anybody what you found?

A. No.

Q. To your knowledge as chairman of the conduit committee, did the conduit committee, acting as a committee, ever investigate such contracts in that way?

A. No.

Q. Now, to your knowledge as chairman of the
4194 executive committee of the Association and as a member of the conduit committee for four years, when you were not its chairman, did either the conduit committee or N. E. W. A., through its head office, ever carry out such investigation?

4195 The Witness: If I understand from the way the question was asked, he is asking if to my knowledge; is that right?

Trial Examiner Norwood: Yes.

Mr. Austin: Read the question.

Trial Examiner Norwood: Will you read the question, please, Mr. Reporter?

(The question referred to was read by the
4196 Reporter.)

The Witness: No.

By Mr. Austin:

Q. Now, speaking entirely for yourself, Mr. Drury, and limiting your answer to your own state of mind and mental attitude and not attempting to tell us anything outside of that, will you tell me whether you considered recommendations of your conduit committee as recommendations to individual manufacturers or as recommendations to groups of manufacturers?

Mr. MacIntyre: I object. It calls for an interpretation of this man's acts. The Commission and the court will determine, through its interpretation, as to what they have amounted to.

This is not a case that is turning upon intent to commit criminal acts because the only remedy here sought is injunction.

Trial Examiner Norwood: It goes to the state of mind. Objection overruled.

The Witness: If I understand the question correctly, you asked me as to whether or not the recommendations

of the conduit committee were intended for individuals or for the conduit association; is that it?

Trial Examiner Norwood: That is whether or not
4197 your understood—

Mr. Austin: Or groups.

Trial Examiner Norwood: You understand them to be—

The Witness: I understood them to be recommendations to the members of the Association to present to the individual manufacturers with whom they did business.

Trial Examiner Norwood: Did you understand they were binding on anybody?

The Witness: No, they were not binding on anybody.

By Mr. Austin:

Q. Mr. Drury, was there any regular attendance of manufacturers at conduit committee meetings?

A. No.

Q. Did the number of manufacturers attending conduit committee meetings during the period you were a member of the committee vary from time to time?

A. Well, I was just looking it up here. (Indicating.) I will see. Most of these reports state.

They do vary.

Q. You do not have to look at those.

Based on your own recollection of the times you were at the meeting, did they vary or did they not?

A. They did. They did.

I see in one case they had eleven or twelve and in
4198 another case six.

(Whereupon, at 4:00 p. m. Thursday, January 8, 1942, the hearing in the above-entitled matter was adjourned.)

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4201 PROCEEDINGS.

Trial Examiner Norwood: Come to order.

Pursuant to adjournment on yesterday the hearing in Docket 4452 is now reconvened at 9:30 a. m. in the Conference Room, 29th Floor, 15 Broad Street, New York, New York.

Mr. Austin: Mr. Drury, will you take the stand, please.

Trial Examiner Norwood: Mr. Walter J. Drury will resume the stand.

WALTER J. DRURY resumed the stand and testified further as follows:

Trial Examiner Norwood: Proceed with direct examination.

Direct Examination (Continued) by Mr. Austin.

Q. Mr. Drury, Commission's Exhibit 39-A, which is a conduit committee report for September of 1936, contains the following language:

"Your committee is of the opinion that this Association should recommend that conduit manufacturers consider the advisability of selling conduit on a consignment basis."

First, I would like to ask you how long, to your
4202 personal knowledge, conduit has been sold on a consignment basis?

Mr. MacIntyre: I object to the question. It is improper in form. If the last half of that question were to be asked, it could have been asked without the first half. With the two taken together, it is improper.

Trial Examiner Norwood: I do not see anything improper about it.

Objection overruled.

The Witness: Since my first acquaintance with the method of handling conduit, about 1912, at that time it was on consignment.

By Mr. Austin:

Q. Referring again to Commission's Exhibit 39-A and the statement included therein beginning here (indicating).

A. (Witness reading): "Your committee"?

Q. Yes.

Will you tell us why you, in writing that report, considered it advisable to include the recommendation in a report dated September, 1936, when, according to your answer to the last question, conduit had been sold on a consignment basis for twenty years prior to the time of the report?

A. Because while conduit was sold on a consignment basis, to some customers and by some manufacturers,
4203 many customers purchased conduit outright and some manufacturers sold it outright.

Trial Examiner Norwood: Was the recommendation made because the practice was not uniform?

The Witness: Not uniform; that's right, sir.

4204 By Mr. Austin:

Q. I show you Commission's Exhibit 39-B and call your attention to the first paragraph of that report which states:

"It is very gratifying that the manufacturers are offering electrical wholesalers an equitable form of sales agency agreement."

4205 What did you mean by that statement?

A. Just about what it says. That it is gratifying to me and the other members of the conduit committee that the manufacturers had—some manufacturers had been offering sales agency forms of agreement to wholesalers which seemed to be perfectly O. K.

Q. Did you mean that all manufacturers had offered an equitable form of agency agreement?

A. No.

Trial Examiner Norwood: He said some.

The Witness: Some.

By Mr. Austin:

Q. Now, Mr. Drury, as chairman of the conduit committee at the time these reports were written, can you state whether there was expressed to you differences of opinion as to the value of a consignment agency plan of distribution?

Mr. MacIntyre: I object. It is improper in substance and in form. It is not material as to whether some one expressed an opinion to him. It would be incompetent for him to give the opinion even if it were expressed.

Trial Examiner Norwood: Do you refer to the members who were present?

Mr. Austin: I refer to the members who were present at the conduit committee meetings.

4206 Trial Examiner Norwood: Objection overruled.

The Witness: Will you state your question again?

Mr. Austin: Would you please read it?

Trial Examiner Norwood: Read the question.

(The question referred to was read by the Reporter.)

The Witness: There were.

By Mr. Austin:

Q. At the time these reports were written, were you in your business familiar with an agency system of distribution without reference to any sale and distribution of conduit?

A. Yes.

Q. And what type of commodity was it that was sold under an agency form of distribution?

A. Lamps was the principal item.

Q. Can you state, of your own knowledge, whether wholesalers members of N. E. W. A. sold incandescent lamps on an agency system of distribution?

Mr. MacIntyre: I object. I did not have time to object to the other question before it was answered. It went into irrelevant and immaterial matter, and I now move that the answer to it be stricken and that the witness not be permitted to answer the present question.

Trial Examiner Norwood: Motion denied and objection overruled.

4207 Go ahead.

By Mr. Austin:

Q. Do you want the question read?

A. Please.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: Yes, they did.

By Mr. Austin:

Q. Mr. Drury, in your experience in the sale of electrical supplies, and basing your answer only on what you know from your own experience, are some lamps sold outright and not on an agency form of distribution?

Mr. MacIntyre: I object.

Trial Examiner Norwood: Overruled.

Mr. MacIntyre: I object to all questions on this line concerning lamps.

Trial Examiner Norwood: You may have an exception to my ruling and your objection will apply to all of them. Go ahead.

The Witness: Some lamps are sold on other than a consignment basis.

By Mr. Austin:

Q. After making the recommendations contained
4208 in that Commission's Exhibit 39-A with respect to a consignment method of selling conduit, did your conduit committee or National Electrical Wholesalers Association, to your own knowledge, and limiting your answer to your own knowledge, take any action with respect to such recommendations?

Mr. MacIntyre: The question is objected to because there is no foundation laid to show this man knows of all the action taken by all members of this committee at all times.

Trial Examiner Norwood: Overruled.

Go ahead.

The Witness: So far as I know, there was no action taken by the committee or the Association.

By Mr. Austin:

Q. Now, Mr. Drury, did you, personally, prepare or assist in the preparation at any time of any manufacturer's consigned stock agreement?

A. No.

Q. Did the conduit committee of N. E. W. A., during your chairmanship of the committee, or N. E. W. A., to your own knowledge, ever prepare or assist in the preparation at any time of any manufacturer's consigned stock agreement?

A. No.

Q. Now, Mr. Drury, the Commission has placed in evi-
dence Commission's Exhibits 39-A, 39-B, 39-C, 39-D,
4209 and 39-E, 40-A, 40-B, 40-C, and 40-D, and 41-A and 41-B, which are reports of conduit committee of the N. E. W. A. from May 4, 1936, to October of 1939, during which time, according to your testimony, you were a member of the committee.

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I would like to show you these exhibits and call your attention to the fact that each of the conduit committee reports makes some reference to the problem of black versus white conduit or black enamel versus galvanized conduit, with the exception of Commission's Exhibit 40-C.

(Counsel hands documents to witness for examination.)

Will you be good enough to tell us, based on your knowledge and experience in the conduit industry and your experience in the Graybar Electric Company and your knowledge as a member of the conduit committee of N. E. W. A. for that period, the background of the black and galvanized enamel situation, the black and galvanized conduit situation, as well as the reason why the committee felt it should recommend the possible discontinuance of black enamel conduit?

A. I can't—

Mr. MacIntyre: I, again, ask that that question, with Your Honor's instructions to the witness, be answered only within the witness' knowledge as to what this committee did and not categorically that the witness or the committee did or did not do certain things.

Trial Examiner Norwood: I think counsel is an-
4210 ticipating. I do not think the question elicits anything but his knowledge there.

You may cross-examine him and if he appears to have been speaking beyond his own knowledge, why I will either strike his testimony or you can refute it.

Mr. Austin: Furthermore, if Your Honor please, the question does not go toward any action of any kind. It goes to this man's state of mind at the time and the reasons for the recommendation.

Trial Examiner Norwood: Yes. You may answer that from your own knowledge.

Go ahead.

The Witness: We were very anxious to effect economies of any kind at that time. This was back when business was very slack and while I do not pose as a conduit expert by any manner of means, my belief was, based upon information that I had, that galvanized conduit would meet any requirement. Black conduit would not meet any requirement. There are many places where it cannot be used advantageously. The two kinds of conduit required two kinds of fittings; two stocks; took up double floor space and all that sort of thing. And we felt quite a

decided economy would be effected not only for us but others in the industry if only the one type of conduit were manufactured.

By Mr. Austin:

4211 Q. To your own knowledge, did you, as chairman of the conduit committee, or the conduit committee while you were a member of it, or N. E. W. A., ever take any action in respect to the black versus white conduit problem other than the statements and recommendations made in N. E. W. A.'s committee reports in evidence here?

4212 The Witness: Would you mind reading the question again?

Trial Examiner Norwood: Answer it from your own knowledge.

(The question referred to was read by the Reporter.)

The Witness: No.

By Mr. Austin:

Q. Mr. Drury, I show you Commission's Exhibit 40-B and call your attention to the last paragraph, the last sentence thereof, in which the conduit committee, in May of 1936, stated that, in its opinion, the desirable result of having white conduit only manufactured could best be

4213 brought about if the individual manufacturer charged the same price for both black and white conduit.

Was there at that time a difference in the price of black and white conduit?

A. There was.

Q. Which of the two types of conduit was the least expensive?

A. Black.

Q. You have stated that black sells for less than white conduit.

Will you tell us whether the language in your report of September 1936, which I have quoted to you, means that you wanted the price of black conduit raised to the price of white, or that you would like to see the price of white conduit lowered to the price of black.

Mr. MacIntyre: That question is objected to. I do not think it is necessary to state the grounds. I think they are obvious.

Trial Examiner Norwood: I think he might tell us what the fact was there.

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Mr. MacIntyre: I know, but the question was leading. It has stated to the witness some testimony and he is asking now for an affirmance of that. It is an explanation.

Trial Examiner Norwood: I don't think so.

Objection overruled. Go ahead.

The Witness: It made no difference whether the
4214 price of white was lowered or the price of black was increased.

By Mr. Austin:

Q. It was the result that you were after?

A. Yes.

Q. Mr. Drury, was that recommendation we have just referred to ever adopted, to your knowledge?

A. No.

I presume you mean this recommendation relative to the elimination of black or white conduit—or black conduit.

Mr. Austin: No, that was not what I referred to.

By Mr. Austin:

Q. Was the recommendation that black and white conduit be sold at the same price ever adopted?

A. No.

Q. Mr. Drury, in Commission's Exhibit 41-B, a conduit committee report for October of 1939, during which time you were a member, according to your testimony, of the committee, and Mr. Latham was chairman of the committee and wrote the report.

There is some reference to a suggestion that manufacturers limit price advances to not to exceed five percent.

Will you explain what was in your mind, as a member of the committee, at the time this recommendation was made?

A. What we had in mind was to—

Mr. MacIntyre: Now, the witness is not answering
4215 the question that was asked.

Trial Examiner Norwood: Strike the answer.

He asked what was in your mind, not what was in somebody else's.

By Mr. Austin:

Q. What was in your mind?

A. The reduction of the amount of speculation in conduit.

Q. Will you explain what you mean and what you meant

at that time by "reducing the amount of speculation in conduit"?

In other words, I would like you to explain how the suggestion ties in with your mental attitude at the time?

A. At that time, whenever there was an advance in conduit, most wholesalers and contractors who were the largest buyers of conduit, received advance notice of the increase. And the greater the increase, the more buying—speculative buying was done, and the more these building contracts were executed. And that, of course, afterwards brought on a demoralization in the market and was causing demoralization in the market. We—I felt the smaller the advance, the less the amount of speculation.

Trial Examiner Norwood: Will you read the answer, please, Mr. Reporter?

(The answer referred to was read by the reporter.)

By Mr. Austin:

4216 Q. To the best of your knowledge, Mr. Drury, as a member of the conduit committee, did you, or the conduit committee, ever take any action with respect to this recommendation other than including it in committee reports?

A. No.

Q. Mr. Drury, did you or the conduit committee when you were its chairman ever make any recommendations to manufacturers as to the price or prices for which rigid steel conduit was to be sold?

Mr. MacIntyre: May I have that question?

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the reporter.)

Mr. MacIntyre: Is this now limited to the witness' knowledge—

Trial Examiner Norwood: Evidently.

Mr. MacIntyre: (Continuing.) Or how broad is it?

Trial Examiner Norwood: Go ahead.

The Witness: No.

By Mr. Austin:

Q. Now, in Commission's Exhibits 40-A and B and 39-A, there are statements relating to manufacturers' conduit cards showing or carrying two prices.

I would like also to call your attention to the fact

4217 that Commission's Exhibit 40-A shows merely

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quantities of conduit, while Commission's Exhibit 39-A not only shows quantities of conduit, but what is apparently a proposed percentage of gross margin.

After looking at those reports, will you explain what was in your mind at the time, as chairman of the committee, when those recommendations were made?

(Counsel hands documents to witness for examination.)

A. (Witness examines documents.)

Mr. MacIntyre: I object to that question, the portion of it that characterizes the exhibit and a portion of the exhibit as to what it apparently means is an improper statement in that question. The witness of course should be permitted to explain in his statement, and for which he is responsible, but his counsel characterizing it to him and telling him what it means and then asking him to characterize it, is improper.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Does counsel claim it does not apparently mean that?

Look at the exhibit and see. If you think it could be worded in a better way, point it out.

4218 Mr. MacIntyre: That characterization as to what it apparently means is an improper wording in the question in that it amounts to a leading question. That was the point of my objection.

Trial Examiner Norwood: Well, I think—

Mr. MacIntyre: To characterize, in questions what is included in exhibits, is improper.

Trial Examiner Norwood: I do not think that is harmfully leading.

Objection overruled.

Off the record, please, Mr. Reporter.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

Go ahead. Answer the question.

The Witness: In the recommendation of May 4, 1936, we recommended that the conduit cards contain only two columns. Or we recommended they have three prices—less than ten thousand pounds and ten thousand pounds to carload and carload and over, that they show only those quantity prices on their cards.

By Mr. Austin:

Q. What was the reason for that?

A. Well, it says here that the previous years the conduit cards—the committee suggested only two columns. One carload and one less-than-carload. And now we
4219 were recommending three prices be shown on the card.

Q. Mr. Drury, can you remember whether that recommendation was ever adopted?

A. I cannot say positively, but I think it was.

Q. You think it was?

A. I think it was.

Q. Was the recommendation referred to in the prior report which is referred to in that report, adopted?

A. I do not know.

Q. Will you go ahead, Mr. Drury, and explain the second exhibit?

A. In the September meeting we recommended that the prices on less than ten thousand pounds—the price cards, rather—show a margin of 22 percent and on ten thousand pounds to carload out of warehouse, they show a margin of 17 percent.

Q. What do you mean by "margin"?

A. I mean that the margin—the difference between the price and the cost would represent 22 percent of the price.

Q. What do you mean by "cost"?

A. Actual cost of the material laid down at the warehouse.

Q. Was that recommendation ever adopted by manufacturers to your knowledge?

A. I cannot answer either one way or the other positively. I do not know.

Mr. MacIntyre: What exhibit is that?

4220 The Witness: 39-A.

By Mr. Austin:

Q. Now, Mr. Drury, did cost surveys made by N. E. W. A. have anything to do with the percentage of gross margin recommended in these committee reports?

Mr. MacIntyre: That is another one of these leading questions. I cannot see why counsel cannot, in asking his questions, ask what they mean instead of asking the witness do they mean this.

Trial Examiner Norwood: I think the assumption is

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a more pronounced factor in this question than in the other.

Mr. Austin: All right, sir, I withdraw the question.

By Mr. Austin:

Q. Mr. Drury, did you, as chairman of the conduit committee at this time, in preparing your report, consider the cost surveys issued and prepared by N. E. W. A.?

A. Yes.

Q. You have stated in your testimony that conduit has been distributed for many years on a consignment basis.

Does that mean you, as a wholesaler, were unable to purchase conduit outright for your own account?

A. No.

Q. Have you, as a wholesaler, purchased conduit
4221 outright for your own account consistently?

A. Yes.

Q. Will you tell us, please, Mr. Drury, how the conduit you have so purchased was purchased by you?

A. Purchased in different ways. Sometimes we made an outright purchase from the manufacturer and had it shipped in in carload lots to our warehouses. At other times we took over material from consigned stock into our own stock. And it became our property.

Q. Mr. Drury, to your knowledge, did you, as chairman of N. E. W. A.'s conduit committee, or did you when you were chairman of the executive committee of the Association, ever appoint a special committee to meet with a so-called jobbers' relations committee of the Rigid Steel Conduit Association?

A. No.

Q. I show you Commission's Exhibit No. 47, a letter addressed to you on January 5 of 1937 by Mr. Tolles, of N. E. W. A.

(Counsel hands document to witness for examination.)

Did the conduit committee, of which you were the chairman, hold a meeting at the Biltmore Hotel on January 6, 1937?

A. No.

Q. Why not?

A. We were told not to.

Q. Mr. Drury, did you attend the meeting of
4222 conduit manufacturers or electrical wholesalers at the Biltmore Hotel on January 6, 1937?

A. I did.

Q. Can you tell us whether there were present at that meeting electrical wholesalers who were not members of a N. E. W. A.?

A. I do not know whether there were or not.

Mr. Austin: Mr. Reporter, please mark this Respondents' Exhibit 283 for identification.

(The document referred to was marked "Respondents' Exhibit No. 283" for identification.)

By Mr. Austin:

Q. I hand you Respondents' Exhibit for identification 283 and ask you to tell us what it is, if you can.

(Counsel hands document to witness for examination.)

A. I beg your pardon, but you asked what?

Q. I asked you to tell us what that exhibit is, if you can, Respondents' Exhibit for identification 283?

A. It looks like a letter from me to Mr. Tolles.

Trial Examiner Norwood: Do you know what it is? Do you recognize it?

The Witness: Yes, I do.

Mr. Austin: I will offer that in evidence.

4224 PETITIONER'S EXHIBIT NO. 283 was offered and received in evidence.

By Mr. Austin:

Q. Mr. Drury, can you tell us whether you advised those present at the meeting of manufacturers and wholesalers that you did not represent N. E. W. A. or its conduit committee at that meeting?

Did you hear the question, sir?

A. Yes.

4225 I did.

Q. When did you make that announcement?

A. Well, I do not remember exactly when I made the announcement, but it was at about the time that they got down to business.

Q. Mr. Drury, did you present any cost figures with respect to the handling of conduit at wholesale to manufacturers at the meeting at the Biltmore Hotel on January 6th?

A. I did.

Q. I show you Respondents' Exhibit 272 and ask you if the figures presented by you at the meeting at the Bilt-

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more were the figures relating to conduit contained in that report?

(Counsel hands document to witness for examination.)

A. I would like to have the question read, please.

Mr. Austin: Will you please read the question, Mr. Reporter.

Trial Examiner: Mr. Reporter, read the question.

(The question referred to was read by the Reporter.)

The Witness: They were.

By Mr. Austin:

Q. Mr. Drury, can you remember whether there was any discussion at the meeting at the Biltmore of quantity brackets and possible gross margins for wholesalers
4226 in connection therewith in so far as the distribution of conduit was concerned?

A. There was a discussion.

Q. Can you tell us whether the opinions expressed by the wholesalers present differed, one from the other, with respect to those subjects?

A. I don't know.

Q. When you went to the meeting in the Biltmore Hotel, what was your understanding of the purpose for which the meeting was called?

A. It was to—the meeting was called by the manufacturers—some manufacturers and it has never been clear in my mind which one of two people called the meeting—was to get the wholesalers' views as to the proper margins they should have and the various steps as established by the manufacturers under the consignment selling plan.

Trial Examiner Norwood: They felt they were not getting enough, did they?

The Witness: Didn't have any established at that time.

By Mr. Austin:

Q. Mr. Drury, you stated that the recommendations with respect to percentages of gross margin contained in your conduit committee reports were partially based on cost surveys made by N. E. W. A. Will you now
4227 tell us why you took with you to the meeting at the Biltmore figures relating to conduit and the cost of distribution of conduit from a cost survey made in 1933 by N. E. W. A. for years prior to the meeting at the Biltmore?

A. Because it was the latest information I knew of.

Q. Did you know at the time you attended the meeting at the Biltmore whether or not N. E. W. A. was making another cost survey covering the cost of handling electrical commodities at wholesale?

A. If N. E. W. A. was making another study at that—

Q. Wait a minute, sir. We do not want your answers to be "if", because that assumes you do not know.

I asked if you knew.

A. I do not.

Q. You do not know whether you knew or not?

A. I don't remember.

Q. Did you, at the Biltmore, offer to give copies of N. E. W. A.'s cost survey of 1933 to any of those persons present?

A. I think I did.

Q. Your testimony here indicates that you have spent a good many years in the purchase, sale and distribution of conduit.

Could you give us any reasonable accurate estimate of the percentage of conduit sold at card prices by the industry during the period under investigation?

4228 Mr. MacIntyre: I object to the question. The question is immaterial. Any answer he can give to it is immaterial because the answer he could give as to these percentages would be incompetent if given by him at this time. So, consequently, we are just wasting time in asking the present question because the next one could not be asked properly.

Mr. Austin: If Your Honor please, counsel for the Commission is objecting to my next question, first of all. And, secondly, he is assuming I am going to ask the next one.

Mr. MacIntyre: Without the next one, this would be irrelevant.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Objection overruled.

Answer whether you could or could not.

The Witness: I could not.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

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By Mr. Austin:

Q. Mr. Drury, have you received so-called freight adder books from manufacturers of conduit?

A. We have.

4229 Q. What use is made, if any, by your company of the freight adders supplied you by manufacturers of conduit?

A. We use them to determine our cost on shipments to our warehouse, and we use them on direct shipments to customers. That is, by direct shipments I mean shipments from the factory to the customer.

Q. Mr. Drury, do you use them on shipments from the warehouse to your customer?

A. No.

Q. How does your company makes sales of conduit?

A. How do we make sales of conduit?

Q. Yes.

A. In many and devious manners.

Trial Examiner Norwood: In what way?

By Mr. Austin:

Q. Will you explain your answer, please?

A. You will have to explain to me what you mean by "make sales".

Mr. Austin: That is a perfect example, if Your Honor please, of what happens if I ask a question the way Mr. MacIntyre would like to have it asked. If I ask the subsequent question, Mr. MacIntyre will object.

Mr. MacIntyre: I try to object to improper questions. I do not know if the next one would be one.

4230 By Mr. Austin:

Q. Mr. Drury, do you sell conduit F.O.B. your warehouse?

A. Not usually.

Q. Do you sell conduit F.O.B. your customers' warehouse or job?

A. Usually.

Q. Why do you sell conduit that way?

A. To meet competition.

Q. What do you mean by that?

A. That it is customary to sell F.O.B. the customer's place of business. We have to do the same thing.

Q. When you sell conduit out of your warehouse F.O.B.

your customer's warehouse, do you absorb the freight or delivery charge from your warehouse to the customer's job?

A. We do.

Trial Examiner Norwood: You are speaking of the customer there. Do you mean your agent?

The Witness: No, not agent. One who buys from us. We do not consign.

4231 By Mr. Austin:

Q. Mr. Drury, have you ever met or seen Mr. Herbert S. Blake, Senior?

A. Yes.

Q. Where?

A. At the Biltmore Hotel.

Q. Can you give us the date?

A. The date is the date of the meeting that was referred to. Was that January 6th, 1937?

Q. Mr. Drury, did you talk to Mr. Blake at that meeting?

A. I think I was introduced to him.

Q. Did you discuss the distribution of conduit with Mr. Blake at that meeting?

A. I did not.

Q. Have you ever met Mr. Blake since that meeting?

A. Not to my knowledge.

Q. Have you ever discussed with Mr. Blake any of the subjects we have covered here today?

A. No.

Q. Mr. Drury, during the period you were chairman of the conduit committee of N. E. W. A., was there, to your knowledge, any relation or communication between Mr. Blake and your conduit committee of any sort?

A. There was not.

Q. Mr. Drury, did you and your conduit committee

4232 when you were its chairman, ever prepare a list of recognized jobbers or dealers in conduit?

A. We did not.

Q. Have you or your conduit committee ever circulated lists of recognized jobbers or dealers?

A. Have not.

Q. Mr. Drury, did you ever assist in the preparation of a form of consignment agency agreement for conduit?

A. I did not.

Q. Did your conduit committee while you were chairman

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of the committee, ever assist in the preparation of a form of consignment agency agreement?

A. It did not.

Q. I hand you Commission's Exhibit 39-D and call your attention to a statement appearing therein relating to questionnaires sent out by N. E. W. A. reflecting the opinions of those replying with respect to a sales agency plan and stating that it was such opinion that the plan represents an improvement over previous methods?

(Counsel hands document to witness for examination.)

That report states a percentage figure of those replying.

Can you tell us what percentage of the members of N. E. W. A. to whom this questionnaire was sent actually replied to the questionnaire?

A. I cannot.

4233 Q. Again referring to Commission's Exhibit 39-D, will you tell us what was meant or rather what you meant when you wrote that the agency system represents an improvement over previous methods?

A. 39-D is that?

Q. Yes.

A. Will you read the question, please.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: As I remember it, that was questionnaire asked as to whether or not, in the opinion of the members of N. E. W. A., the agency plan of selling conduit was in their opinion an improvement over previous methods, and the results as stated here were 92 percent of them replying said, "Yes."

By Mr. Austin:

Q. You do not know—

A. They were really stating what the results of the questionnaire were.

Q. Mr. Drury, how many manufacturers of conduit does your company represent or, to put it another way, how many brands of conduit does your company handle?

A. You mean the Graybar Electric Company?

4234 Q. That's right.

A. As a total or just this local—

Q. Can you answer as a total?

A. I cannot answer for the company as a whole.

Q. Can you answer for the eastern district of which you are the manager?

A. It varies from four to six brands I should say.

Q. Mr. Drury, you acted as chairman of the conduit committee at its meeting in Hot Springs in May, 1938, according to your previous testimony.

Did you, or the conduit committee at that meeting, or at any other meeting at which you were present, ever make any representations to the manufacturers present urging them to cut off distributor-agents violating their agency agreements?

A. Did not.

Q. Did you, at that meeting, or the conduit committee at that meeting, or to your knowledge the conduit committee at any other meeting you attended, make representations to manufacturers asking them to notify the distributor-agents they must observe resale prices in view of their agency contracts?

A. No.

Q. Now, referring again to the subject of recommendations by your committee with respect to the so-called agency plan of distribution: did you, as chairman of that committee, or your committee, ever take any action with
4235 respect to such recommendations?

A. Will you ask the question again, please?

Mr. Austin: Will you read it?

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: I do not remember any.

By Mr. Austin:

Q. Now, Mr. Drury, you are manager of the eastern district of Graybar?

A. Yes.

Q. Are prices at which you are to sell conduit in the eastern district dictated to you by the head offices of Graybar?

A. No.

Q. Can you state, of your own knowledge, based on your long experience with Graybar Electric Company, whether managers of Graybar districts are left free to fix the prices at which they will sell the commodity they handle?

A. Speaking of conduit now or all commodities?

Q. I said all commodities.

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Mr. MacIntyre: I object to the question, unless it is limited to conduit. We are not concerned with lamps.

Mr. Austin: We will limit it to conduit.

4236 Mr. MacIntyre: Although we do want light.

By Mr. Austin:

Q. Limit your answer to conduit, sir.

A. No, they are not restricted.

Q. How many districts does Graybar Electric Company have?

A. Nineteen.

Mr. Austin: That is all.

Mr. Stewart: I should like to ask some questions, please, Your Honor.

Trial Examiner Norwood: Go ahead, Mr. Stewart.

By Mr. Stewart:

Q. Referring to the meeting of January 6, 1937—you know the meeting to which I am referring?

A. Yes.

Q. In the Biltmore Hotel?

A. Yes.

Q. What agreement, if any, was there entered into between the jobbers there present and the manufacturers there present on the subject then before the committee?

A. None.

Mr. Stewart: That is all.

Trial Examiner Norwood: Any further questions?

(No response.)

Trial Examiner Norwood: Cross-examine him.

4237 *Cross-Examination by Mr. MacIntyre.*

Q. Mr. Drury, is it your testimony that the headquarters of the Graybar Electric Company permits each of its district managers, such as yourself, to charge just any old price on conduit they so desire? One charging a higher price here and another a lower price in Philadelphia, and another charging a still lower price in say Pittsburgh?

A. Yes.

Q. In other words, they can discriminate among the customers of the company depending on where the customer is located; is that correct?

A. No.

Q. What restraint is placed upon you and the other district managers by the company to prevent charging just any old price they might want to charge?

A. The company—they could not charge any old price they wanted to charge. They couldn't sell for a cent a foot or something like that.

Trial Examiner Norwood: They wouldn't want to do that, would they?

The Witness: No.

By Mr. MacIntyre:

Q. What did they tell you about what to do in making prices?

A. They don't tell us very much. Competitive conditions vary in different places and if we are to stay
4238 in business we have to be allowed competition at those points.

Trial Examiner Norwood: Either by sale on the card or meet competition, one or the other.

The Witness: They don't say that either.

By Mr. MacIntyre:

Q. Have you any superiors in the sales department of the Graybar Electric Company?

A. I report to the president of the company.

Q. Does he have anything to do with sales of the company?

A. Yes.

Q. And is he the sales manager over you in connection with your handling sales in this district?

A. No, he is not the sales manager. We have two sales managers.

Q. Who is the sales manager that is superior to you in the company?

A. I report to the president.

Q. He is the only superior sales executive, then, to you?

A. He is the only superior executive.

Q. Is he a superior sales executive, or is he just a superior general executive?

A. General executive, including sales, I should say.

Q. In other words, there is no superior to you in sales; is that correct, in the Graybar Company?

A. That's right.

4239 Q. You stand ace high?

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A. No, I wouldn't say that.
Q. I am talking about in sales?
A. No, I report to the president.
Q. And no one in the company ever tells you what to charge for your conduit?
A. Nobody ever has that I can remember of.
Q. Do you ever have any correspondence with the headquarters office concerning pricing policies?
A. On conduit?
Q. Yes.
A. I do not remember any.
Q. That would be between you here and the office in Chicago?
A. No, no. Our headquarters office is here at 420 Lexington Avenue. I am located at 180 Varick Street.
Q. You do not need correspondence, then?
A. No, we talk over the telephone.
Q. And any correspondense that related to prices between the branch and Chicago and the headquarters would be between here and Chicago?
A. Between 420 Lexington Avenue and Chicago, yes.
Q. Do you testify that to your knowledge there has never been any correspondence between—
A. I speak for myself.
4240 I beg your pardon.
Q. Oh, your testimony here is to be taken, that is, in so far as it applies to instructions on prices, from the headquarters office as being limited to instructions to your office?
A. That is right. I can only speak for myself.
Q. You do not know what the headquarters office has done with respect to the other branches of the Graybar Company?
A. I have no way of knowing.
Q. You do not know whether or not they have told the managers in those branches to sell at card prices or to do one thing or the other?
A. I would have no way of knowing.
Q. Speaking only for the New York office?
A. That is all.
Q. You told Mr. Austin a few minutes ago you purchased from four to six brands of conduit?
A. Yes.
Q. Will you name all of those brands that you can?
A. I can name the manufacturers of those brands.

Q. Yes. That is all right.

A. We handle National Electrical products; Enameled Metals; and Triangle; and Walker Brothers; and Youngstown Sheet & Tube.

Those are five. Those are the principal suppliers.

4241 Q. Do you buy from all those five on outright basis at times?

A. I am quite sure we have.

Q. In other words, you carry some stocks of their goods in your warehouses that you bought outright from them; is that correct?

A. That is right. But not continuously, however.

Q. Well, fairly regularly, we will say?

A. Yes, fairly regularly.

Q. And do you have any consignment stock arrangements with any of those five?

A. We do.

4242 Q. Name those manufacturers and the five that you just named with whom you have consigned stock agreements.

A. Consigned stock agreements?

Q. Yes, sir.

A. Just for consignments?

Q. Yes.

A. I think we have them with all of them, except Triangle. Do you want me to name them?

Q. Yes.

A. The National Electric Products, Enamel Metals, and Youngstown Sheet & Tube.

Q. And Walker?

A. Yes, Walker Brothers.

Q. And in connection with your handling of their stocks on consignment they send you their price cards as they are to you, is that correct?

A. They do send them to us.

Q. And do you from time to time have requests from personal representatives or through the mail from any one of those to send to them any price cards that any other one has sent you?

A. I never had such requests.

Q. In other words, the salesman never comes into your office representing either one of those four, and asks if he may see any of those price quotations that you

4243 may have from any of the other companies?

A. No; it isn't necessary.

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Q. Why do you say that?

A. Because they are pretty common property.

Q. Do you mean the price cards are common property?

A. Yes, in the trade.

Q. So they know what is included on them without asking you, is that correct?

A. Yes. Most electrical contractors and large buyers get these cards from a number of manufacturers.

Q. Well, if all of them refuse to let any of the others know what had been quoted by any one manufacturer, these contractors and other jobbers would prevent the information from being passed along, wouldn't they?

Mr. Austin: If Your Honor please, I noted yesterday that Mr. MacIntyre objected very strenuously to people talking about what they did not know anything about; what reasons there may be for somebody else doing something, and why manufacturers did so and so, and it seems to me that the basis of Mr. MacIntyre's objection is just as reasonable here. I do not know why Mr. Drury should know—

Trial Examiner Norwood: The difference is that Mr. MacIntyre is cross-examining.

By Mr. MacIntyre:

Q. Have all other jobbers—

4244 Mr. Stewart: Was there an answer to that question, Mr. MacIntyre? If you have I would like to know it.

Mr. MacIntyre: Well, there has been—

Mr. Stewart: I do not know whether you are talking about cards or quotations.

By Mr. MacIntyre:

Q. Mr. Drury, if all other jobbers and wholesalers and contractors didn't give any of the conduit manufacturers any more information concerning what each other was quoting than you stated that you give them concerning their price cards, how do you see that each of them could send out their price cards carrying identically the same price quotations?

A. Well, I don't know.

Q. Do you know of any practice on the part of other jobbers who handle more than one brand of conduit under consignment stock agreements who get more than—that is, the price cards of more than one manufacturer, and give out information to each other?

A. I don't know anything about the number of price cards the other wholesalers get.

Q. You just know that you get these four, but you keep them an absolute secret, is that correct?

A. No. I didn't intend to make that statement. We may get more than four. As a matter of fact, I
4245 think we do get many more than four.

Q. You file them away and don't tell anyone about what is contained on them after you get them, is that correct?

A. No, I don't say that we never tell anybody anything about them.

Q. Well, what are the facts on that? Do you tell any one about what is on the cards after you get them?

Mr. Stewart: Now, just a moment. I would like to object unless anyone is specified. Who is "anyone"? The whole world?

Mr. MacIntyre: Well, if he says "yes" as to that, then I will ask him as to that particular one.

Trial Examiner Norwood: I think I will let him ask him if there is anybody in the world.

Mr. Stewart: Who is anybody? Anybody in the world?

Trial Examiner Norwood: Objection overruled.

The Witness: I personally don't get these cards.

By Mr. MacIntyre:

Q. Who does?

A. Different people in the organization.

Q. Do you—

Mr. MacIntyre: Strike that, please.

Q. Are you then in a position to say what they do with them and who they show them to?

4246 A. I am not.

Q. Now, why do you—

Mr. MacIntyre: Strike that, please.

Q. Why did you desire that there be a uniform practice of consigned stock methods of selling on the part of all manufacturers at the time that this discussion was had September, 1936, which is Commission's Exhibit No. 39-A?

A. To eliminate some of the chaotic conditions that had been existing in the conduit industry.

Q. And those chaotic conditions were what?

A. Well, there were so many of them that it would be quite impossible for me to enumerate them all.

Q. Was one of the conditions a matter of the inability

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on the part of anyone in the jobbing trade to know what other jobbers were paying manufacturers for conduit?

A. That was one of them.

Q. And why did you want that particular condition rectified?

A. So that we could compete with some intelligence.

Q. In other words, you felt that you wanted to know what the cost was to your competitors?

A. Yes.

Q. And you felt that in your competition with them you must know what their costs were?

4247 A. Well, I have to know something about their costs in order to know whether or not we were purchasing intelligently or correctly.

Q. Well, in your efforts to compete with these other jobbers you felt that it was necessary for you to know what the costs were of your competitors, is that correct?

A. In order to compete intelligently we had to have some knowledge—I wouldn't say we had to know—exactly what they paid; some knowledge of what their costs were.

Q. The consignment stock method you felt would give you all the knowledge that you thought you needed, is that correct, if it were indulged in by all manufacturers?

A. Yes.

Q. And how did you feel that it would do that?

A. We felt that it—or that if we had a consignment arrangement that it would lead to the elimination of some of the abuses brought about by the building contracts, and that if those building—the abuses in the building contracts were rectified all manufacturers would have to be selling at about the same price.

Q. How would consignment stock arrangements have anything to do with building contracts?

A. Because the manufacturer would be retaining title to the conduit in the wholesalers' efforts in business, and he would be able to check more closely on the building
4248 contracts than he had been checking.

Q. Well, consigned stocks in your warehouses are not used on building contracts as a general rule, are they?

A. Oh, yes, they are; particularly in large cities.

Q. And how do you feel that such a close check as that by the manufacturers over the deliveries to your warehouse would help conditions? That is, the making of it more certain as to what the manufacturers were charging the jobbers?

A. Well, because as I say most of the abuses came about —most of the troubles came about through the abuses of the building contracts, and if the building contracts were more closely supervised, why then, prices would be more uniform.

Q. In other words, you felt that prices would be more uniform if building contracts were not allowed more conduit other than the particular building would require, is that correct?

A. That is right.

Q. Or that any contract be entered into with anyone specifying for a delivery of conduit in connection with a specific building contract beyond what the building would require, is that correct?

A. Well, we felt—I am trying to answer your question now as I think you put it.

If the building contracts were restricted to the
4249 actual amount of conduit required for the specific building it would be much more uniform.

Trial Examiner Norwood: These building contracts are made in the name of the manufacturer, are they not?

The Witness: They are.

Trial Examiner Norwood: An agent, very often?

The Witness: Yes; usually by their agent or their representative.

Trial Examiner Norwood: That is what I mean.

The Witness: Yes.

By Mr. MacIntyre:

Q. And the element that would thus be eliminated would be the element of speculation, is that correct?

A. Not only that, not only that but—well, it would—

Q. Well, it would eliminate that element, would it not?

A. It would eliminate part of the speculation; yes.

Q. In other words, an agreement—if what you were seeking to have accomplished should be accomplished, the man purchasing conduit at a price under a contract and having delivery at a later date when prices were much higher, if he were not compelled to use it on a particular building he would be able to break market prices prevailing at the higher level, is that correct?

A. That is right.

Q. And that is one of the things that you were
4250 seeking to prevent, is that correct?

A. Yes, that is right.

Q. In fact that is one of the greatest elements in this so-called chaotic condition here to which you refer, is that right?

A. Well, the abuse of the so-called building contractor was largely responsible for what I call the chaotic conditions in existence at that time.

Q. But the greatest element in these chaotic conditions to which you refer was this one to which you just referred in your answer to one of the immediately preceding questions about the breaking of price, is that right?

A. That is right.

Q. Now, on direct examination you spoke to Mr. Austin about the use of consigned stock agreements in the sale of lamps. Do you remember that?

A. I do.

Q. One of the principal users of those, and pioneer users of those was the General Electric Company, wasn't it?

A. You mean users on the consignment arrangement?

Q. Yes, on lamps.

A. Yes, I think so.

Q. And tying together with the consigned stock agreement provision one relating to license which is under patent, is that correct?

4252 Trial Examiner Norwood: You can lay the groundwork, and ask him if he knows anything about that. Do you know anything about those patent agreements?

The Witness: I know nothing about the patent agreements.

Trial Examiner Norwood: Do you know that they had a patent agreement?

The Witness: Well, I have heard that they had.

By Mr. MacIntyre:

Q. Well, Mr. Drury, in these consigned stock arrangements with the General Electric Company on lamps you recall that they were the ones that were being used

4253 about 1920 to 1925, is that correct?

A. What were being used?

Q. Consignment stock arrangements by the General Electric Company on lamps.

A. Well, so far as I know they have been used long before 1920 and long subsequent to 1925.

Q. But they were being used in that period of time, from 1920 to 1925, is that correct?

A. That is a good while ago. I think I am quite positive that they were.

Q. And it was the type of agreement, consignment stock agreement, that was used by the General Electric Company during that period of time on lamps to which you were referring in your answers to Mr. Austin on direct examination, is that correct?

A. I don't know anything about the details of the agreement or the consignment arrangement that they had in 1920 to 1925.

Q. I am asking you whether or not the general type of agreement to which you made reference on direct examination was that agreement?

A. I didn't have any particular agreement in mind at all.

We knew that we were handling lamps on a consignment basis, and we proposed to have conduit handled on a consignment basis.

4254 Q. And you were seeking to secure the same results in the handling of conduit?

Mr. Bozeman: Just a minute. I submit that we have gone far enough into this excursion into a collateral field here.

The witness has said that he does not know anything about the contents of those lamp agreements. They are not in litigation here and—

Trial Examiner Norwood: No, we have brought this inquiry here to draw inferences to what was usual and what was being done, and counsel on cross-examination has a right to go into that.

Objection overruled.

By Mr. MacIntyre:

Q. And you were seeking to secure the same results in the distribution of conduit with respect to pricing as you had noted had been secured by the General Electric Company in its distribution of lamps under its consigned stock agreements, is that correct?

Mr. Stewart: May I have the question read? There was conversation in here and I did not hear it.

Trial Examiner Norwood: Read the question, please.

(The question referred to was read by the Reporter.)

Mr. Stewart: I object to that as not proper cross-
4255 examination.

The General Electric Company contract is not in evidence, and the question assumes a fact which has not

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been established as yet as to whether or not the General Electric contract does control prices, and to what extent.

Trial Examiner Norwood: Objection overruled.

I think the witness can clarify that.

Mr. Stewart: Yes, if he knows.

Trial Examiner Norwood: Go ahead.

The Witness: We were not attempting to establish the same price set-up on conduits as under the lamp agreement of the General Electric.

By Mr. MacIntyre:

Q. How is it that you—

Mr. MacIntyre: Strike that, please.

By Mr. MacIntyre:

Q. Now, did you secure the idea that it would be beneficial to you and others in the handling of conduit as jobbers to use the consignment method?

A. How did I get the idea?

Q. Yes. Where did you first get that?

A. I don't know.

Q. Is it your testimony that you had not noticed that that was used in the General Electric consigned stock arrangements on lights?

4256 A. No.

Q. You had noted that before—

A. You asked me where I got the idea, and I don't know where I got the idea.

Q. Is it your testimony that the knowledge that you got that the General Electric Company was using consigned stock arrangements in the sale of its lamps had nothing to do with your suggestions that consigned stock arrangements be uniformly adopted in the conduit industry?

A. No, that is not my testimony.

Q. How much did it have to do with your thought that it would be a good thing for the adoption of a consigned stock arrangement uniformly in the conduit industry?

A. Well, it had something. I can't tell you exactly how much.

Q. In other words, you are not able to tell us now just to what extent it did influence you?

A. No, I don't know. I wouldn't be able to say.

Q. Now, this report of yours as chairman of the conduit committee, which is Commission's Exhibit No. 39-D, states that 92 per cent of your organization, the National Whole-

salers Electrical Association, thought it would in their opinion be an improvement for them; that is, for the manufacturers of conduit, to adopt the sales agency plan,—

Mr. Stewart: Now, may I have that question read?

4257 Mr. MacIntyre: I have not completed it yet.

Trial Examiner Norwood: Well, please complete your question.

By Mr. MacIntyre:

Q. (Continuing): And you were there referring to the consignment stock plan, weren't you?

Mr. Austin: I object to that on the ground that it assumes a fact which is shown on its face on the paper which Mr. MacIntyre has in his hand.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the reporter.)

Trial Examiner Norwood: I think that that last part—

Mr. Austin: It is not 92 per cent of the organization. It is 92 per cent of those replying to the questionnaire.

Trial Examiner Norwood: I will sustain the objection as to the form.

You had better reframe the question, Mr. MacIntyre.

Mr. MacIntyre: Very well.

By Mr. MacIntyre:

Q. Mr. Drury, I am calling your attention to the next to the last paragraph on the first page of Com-

4258 mission's Exhibit No. 92-D, which reads as follows:

"The results of the questionnaire sent out by NEWA a few months ago show that 92 per cent of those replying were of the opinion that the sales agency plan for selling conduit represents an improvement over previous methods."

You were there referring to the consigned, a proposed consigned stock arrangement plan of sales, weren't you?

A. Not a proposed plan. According to this it says that the results, the notion of the sales agency plan represents an improvement. In other words, that the plan was in effect at the time of this (indicating).

Q. But it had already been adopted?

A. That is right.

Q. And the plan that you were referring to as having been adopted or used was the consigned stock plan, is that correct?

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A. The consigned stock plan, or sales agency plan, whichever you choose to call it.

Q. In other words, you just call it sales agency plan here, but you were really referring to the consigned stock plan, is that correct?

A. They were one and the same in our minds.

Q. Yes. And what was the nature of the improvement that you had noted through the use of that plan?

A. That I had noted?

4259 Q. Yes.

A. I hadn't noticed any.

Q. In other words, you didn't see the same things that 92 per cent of those replying to the questionnaire had seen?

A. That is right.

Q. Now, you informed Mr. Austin that it is usually your practice to make your sales f.o.b. your customer's warehouse. You do make some sales f.o.b. your warehouse, and the customers picking up the conduit and carrying it away, is that correct?

A. That is right.

Q. Now, what price do you charge them for that? Is it the same as the price which you charge when you deliver it in your trucks to the customers' job?

A. It is.

Q. That is, it doesn't matter whether he brings his truck or not?

A. Well, we are willing to deliver, and if he chooses to come in and get it we are glad to have him do so.

Q. And he gets the same price?

A. That is right; and there are not many of them.

Trial Examiner Norwood: Well, suppose it is out of town and he sends a truck. Do you add the railroad charge?

The Witness: No. We charge him the same price as though we were delivering it in town.

4260 Trial Examiner Norwood: But suppose he was not out of town, through; suppose he carries it out of town. Do you charge him the price, the same price on that?

The Witness: No. In this territory, and I am speaking of the section only with which I am familiar, New York State, New Jersey and a portion of Connecticut, there are so many wholesalers that it is necessary for us to sell

f.o.b to the customers' job, to the customers' door in almost every part of these three states.

There are some exceptions, but very few.

Q. What do you mean "meeting competition" as you have used it in that particular instance?

A. Well, I mean that, for instance, if we take Passaic, if in Passaic there is a jobber he can very readily deliver to customers in that immediate vicinity. Now, if we want to sell in the vicinity of Passaic we have to sell f.o.b. in the vicinity of the customer's business just as well as the local jobber.

Q. At the same price at which he sells it?

A. Not exactly at the same price, but we have to deliver the material down at his place of business. The prices may not necessarily be the same.

Q. In other words, you don't feel that it is necessary for your conduit to be sold at exactly the same price as your competitors in order to meet competition?

4261 A. No, not in all cases.

Q. Now, you told Mr. Austin that you used the freight adder books and the freight bulletins of the conduit manufacturers?

A. Yes.

Q. Are they supplied to you by your suppliers?

A. Yes.

Q. From whom you purchase conduit?

A. Yes.

4262 By Mr. MacIntyre:

Q. Mr. Drury, when you answered that question which Mr. Austin put to you as to what use you made of the freight adder books and the freight bulletins which are supplied to you by conduit manufacturers, did you mean that you used them in figuring what the total charge was which was made to you by the conduit manufacturers in laying down the conduit at your place or at the place of your customer? Is that what you meant?

A. No, I didn't—the customer doesn't enter into the thing at all, except in cases of direct shipment.

Q. That is what I am talking about.

A. In the case of direct shipment, yes, direct shipment from the factory.

Q. And do you mean when you said that when

4263 you are figuring up the cost that you were using them in figuring what the manufacturer charged laid

down at your warehouse or laid down at your customer's place on direct shipment, is that correct?

A. It wouldn't be laid down at the customer's place. It would be laid down at our warehouse. It is f.o.b. cars at destination in either case.

Q. In other words, you are using these to figure what the manufacturers' laid down price would be to you f.o.b. cars at destination?

A. That is right.

Q. And that is what you meant when you answered Mr. Austin that you used them in figuring costs, is that correct?

A. That is right; that is right.

Q. In what way, Mr. Drury, did you consider that the continuation of warehouse stocks by manufacturers, from which any of their customers could go to the warehouse and secure conduit, resulted in unfair price discrimination?

A. Well, if we as a wholesaler purchase conduit in carload lots and purchase it into our stock, brought it into our stock, and performed the distributing function for a manufacturer, and another wholesaler, we will say, who didn't carry a stock but had a small place of business on the third floor, perhaps, he could buy from another manufacturer from his local stock at the same price as we
4264 paid for large quantities, and we did the wholesaling at the same time, then I think that would be discrimination.

Q. With you buying from one manufacturer and this other man buying from still another manufacturer?

A. With a local stock; yes.

Q. That would be unfair discrimination on the part of the two manufacturers?

A. Well, it seemed so to me.

Q. And that is what you were referring to in your answer to Mr. Austin on direct examination, is that correct?

A. That is right.

Q. Now, you told Mr. Austin that you found that the statements that manufacturers made at a meeting to the effect that warehouse stocks had been discontinued later proved to be erroneous, is that correct?

A. I did.

Q. Now, will you cite to me any instance which came directly to your knowledge about which you actually knew that no manufacturer or any manufacturer was continuing

warehouse stocks except on the West Coast after that statement was made to you?

A. I said yesterday afternoon that I had never seen any of those conduit warehouses, and hadn't seen them.

Q. The only thing you based your statement on that was that all of them, except on the West Coast, had not
4265 been discontinued, then was based on hearsay and rumor, is that correct?

A. It was based upon what I had been told by a number of people; yes.

Mr. MacIntyre: Well, Mr. Examiner, I move that the witness' answer on direct examination that what these manufacturers had stated to him at this meeting, which is shown by Commission's Exhibit No. 39-A, to the effect that warehouses had been discontinued, be stricken from the record because it is shown now that he did not have knowledge that those statements were erroneous.

It was the statement made yesterday afternoon on direct examination.

Trial Examiner Norwood: Well, he went into the basis of his knowledge then, and I permitted him to ask him that.

I will defer the ruling on that until I can study the record on it.

Now, did these reports come to you in connection with your duties on this committee?

The Witness: No. It was more in connection with the local situation, the local New York situation.

I had it on pretty good authority, but as I say I didn't see them myself.

Trial Examiner Norwood: Well, I think that I
4266 limited that testimony yesterday to just showing what information you received and acted upon.

I think I shall deny the motion and state that I am doing so with the understanding that that testimony is limited not to prove the facts, but to show the information that this witness received and acted upon there in connection with those reports.

Mr. MacIntyre: Well, he did not state that he acted on the information.

He stated to Mr. Austin that he found later that these satements which were made at the meeting were made in error, and now on cross-examination it is disclosed that he had no knowledge upon which he could state that they

had been discontinued, and he says that there had been statements, some statements made to him that were contrary or at least not entirely consistent with the statements which had been made to him at the meeting.

Mr. Gilpatric: I certainly take exception to that statement on the part of Mr. MacIntyre:

This witness has said that he was informed by reliable sources that these warehouses had been discontinued.

He does not go around and look at every warehouse in the country. That is not the way things happen in business or in anything else.

4267 Trial Examiner Norwood: Well, I will defer that ruling and study the record on it.

It appeared to me that it had been limited in scope, but I am not sure that circumstances would permit it to stand—

Mr. Austin: There is nothing to argue about—

Mr. MacIntyre: Then why was it necessary to get this particular statement on this from this particular witness on direct examination?

Trial Examiner Norwood: We will go off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

The motion is denied, but it may be renewed.

I will allow it to stand this way.

Mr. MacIntyre: Is any motion made at this time to limit that testimony he made on direct examination to show that he was acting on hearsay and that it should not be taken for the truth of statements also denied?

Trial Examiner Norwood: I will make a study of the record with respect to that, and you may incorporate something like that if you want to renew it.

You may proceed.

By Mr. MacIntyre:

Q. Mr. Drury, do you recall ever having asked
4268 any manufacturer of conduit to reduce the price on galvanized to the prices they were then quoting on enamel?

A. I do not.

Q. Do you know of any action by any member of your conduit committee of the National Electrical Wholesalers Association in requesting that such be done?

A. I don't remember any.

Q. In your purchase of conduit outright which you have

carried in warehouses in your stocks for your own account, have you quoted prices on such conduit to public bodies?

A. I think we have.

Q. And do you also sometimes quote in sealed bids to public bodies, including agencies of the Federal government, prices on conduit which you expect to buy for your own account?

A. I don't know of any such case where we anticipate buying.

Q. It is your testimony then that in all instances where you have submitted bids to agencies of the Federal government under seal that you have done so with the idea of supplying that conduit under a consigned stock arrangement with some manufacturer?

A. No, no; that isn't my testimony.

Q. Well, the previous testimony—

A. You might have an owned stock. You might
4269 have had a quotation on that.

Q. It is then your testimony that your bids to agencies of the Federal government have included offers to furnish those agencies with conduit from your stock and from purchases made outright by you or yet to be made outright by you as well as conduits handled by you under consigned stock arrangements, is that correct?

Mr. Austin: Just a minute. If Your Honor please, I think it was the next previous question that Mr. MacIntyre asked if his bids were made on the basis of anticipated prices, and he had the specific answer "No."

Now, he hides that question in a four-ring circus question, and I think that this is four questions in one, and I object on that basis and request that counsel ask questions one at a time.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the reporter.)

Trial Examiner Norwood: Objection overruled.

Is that right?

The Witness: That is right.

By Mr. MacIntyre:

Q. Do you arrive at the prices that you quote to Federal agencies in such bids any differently when you
4270 are proposing to furnish conduit owned by you or furnished—that is, from the way in which you figure

your prices from the way in which you furnish conduit to supply in these consigned stocks handled by you?

A. It would all depend.

Trial Examiner Norwood: On what?

The Witness: Upon the price that we paid for the conduit in our own stock and the conduit that we were to purchase for our own stock.

By Mr. MacIntyre:

Q. In what manner would you figure the prices differently in any instance from the manner in which you figure it in any other instance?

A. I don't understand.

Mr. Austin: I do not either.

Trial Examiner Norwood: If you were bidding on a contract where you will need more conduit than you have in stock, some of which you must get from the manufacturer and some of your own which you must supply from your own stocks, how would you figure that bid?

The Witness: We would figure our average cost of the two, and bid accordingly.

By Mr. MacIntyre:

Q. Is that any different from the instances where you bid altogether on consigned stock, that is, with a
4271 view of furnishing altogether consigned stock conduit?

A. We handle it just the same. We figure on the basis for our costs.

Q. In either instance?

A. In either instance.

Q. And your cost that you are referring to there is the price which you must pay the manufacturer for it, is that correct?

A. That is right.

Q. Laid down at the destination where you must deliver it, is that correct, if it is a direct shipment?

A. If it is a direct shipment. If it is warehouse it is cost at the warehouse.

Q. Do you figure the bids which are submitted by your office here in New York with the Federal government?

A. I do not.

Q. Who in your organization does?

A. We have some five or six people, all of whom are qualified to make quotations of that kind.

Q. Will you name those?

A. DeForest, Wills, Brown, Norman, and Martinson.

Q. And they figure those prices in the manner which you have outlined to us here, do they?

A. My statement was that most of our bids were based upon our costs, is that right?

4272 Q. Well, I asked you if there were any other ways of figuring them; any of them?

A. You didn't ask that question of me.

Q. Well, I ask it now. Is there any other way that you figure bids at any time?

A. Yes.

Q. What method is used there?

A. You can take the card price and quote that if you want to without paying any regard to your costs.

Trial Examiner Norwood: Did you do that?

The Witness: We have on occasions done that.

I take it that we are talking about some certain period of time, are we?

By Mr. MacIntyre:

Q. Yes.

A. What is that period of time?

Q. Oh, since 1934.

A. Up to today?

Q. Yes.

A. Well, conditions varied a great deal in that period.

Q. Mr. Drury, I am showing you Commission's Exhibit No. 727 which shows bids by the Graybar Electrical Company to the Navy electrical department, and quite a number of competitors bid exactly the same prices down to the fourth decimal point in terms of cents per foot on
4273 conduit, including the Navy Yard in Brooklyn, New York. Will you explain how your office figured bids in that instance?

A. We didn't figure this bid.

4274 Mr. MacIntyre: What is the question?

Trial Examiner Norwood: What was your answer to that question?

The Witness: I don't know anything about this. This was made in Washington. I had nothing to do with
4275 that.

Trial Examiner Norwood: But your price appears on that. How did you make that?

The Witness: I don't know. I didn't make this price. It was made in Washington.

Trial Examiner Norwood: You do not know anything about it?

The Witness: I don't know anything about it.

By Mr. MacIntyre:

Q. The prices made by the Graybar Electric Company and which are outlined on this Commission's Exhibit 727 didn't clear through your office, your New York office, then?

A. No.

Q. In other words, the delivery of conduit for the Graybar Electric Company to the Navy Yard here in Brooklyn and possibly to other people is done on prices figured by other officials of the Graybar Electric Company, is that correct?

A. Not other officials.

Q. Well, who are they if they are not officials?

A. As I say I don't know anything about this particular transaction at all.

I don't know who figured it. I assume that I am volunteering the information that prices were made at
4276 Washington, D. C., at our Washington, D. C., office of the Graybar Electric Company.

Q. But do you have any information for these prices as to how they were figured and how they happened to be the same as all the competitors of the Graybar Electric Company?

A. I never heard of the transaction until just now. I don't know a thing about it and I didn't know a thing about it.

Q. Well, insofar as prices such as these are concerned, which are figured by other officials of the Graybar Electric Company in some other locations for the delivery of conduit into the territory of the local office, would you modify your testimony that you gave on direct examination that you had everything to do with the figuring of prices for the delivery of conduit by the Graybar Electric Company in this territory?

A. No. My testimony—in my testimony I didn't say anything about the delivery into this territory. I talked about the prices which we made, and not making any restriction as to the delivery.

Q. You didn't consider that a price made for the de-

livery of conduit to the Brooklyn, New York, Navy Yard, as being a price made by the Graybar Electric Company in this territory?

A. You mean the Graybar Electric Company of New York?

4277 Q. Yes.

A. No. I mean prices of shipments to San Francisco or Seattle, without any regard to our San Francisco or Seattle houses.

Q. In other words, the territory isn't very well defined by the different offices of the Graybar Electric Company?

A. Yes, it is very well defined.

It is dependent upon where the purchase is made and not where the goods are shipped.

Q. And you can't determine how the prices are made in any of the other offices?

A. No.

Q. You don't know anything about them?

A. I didn't say—I wouldn't say I don't know anything about it, but I don't know just how they make their prices. I think that I know something about it because we all operate pretty much the same.

Q. That is, all of the district managers of the Graybar Electric Company?

A. Yes. We have a—the business is about the same, and I think they operate pretty much as we do. They meet the competitive situation if they can.

Q. And in figuring bids such as this where you have figured, have you used the cards in quoting prices to the Federal government?

4278 Trial Examiner Norwood: Have you ever figured bids like this where there were identical prices by a half dozen companies?

The Witness: Yes.

Trial Examiner Norwood: How did you do that?

The Witness: Well, usually by using the card price.

By Mr. MacIntyre:

Q. Do you know of any other way that you and your competitors could get exactly the same prices in your bids under seal to public bodies except through the use of your cards?

A. Yes.

Q. How?

A. By using exactly the same amount of reduction on the card.

You take a given figure and you take five per cent from that, and then the result would be the same for a half dozen other people.

Q. In other words, if all of them did exactly the same thing then they would get exactly the same result?

Mr. Stewart: We will stipulate that. I never understood the mystery about that. It is perfectly obvious that if they all use the same cards that they are bound to get the same results.

Trial Examiner Norwood: But how would you know just what discount they were going to take from the cards?

4279 The Witness: You wouldn't know, but if you lost the last order and you wanted to get this one and you saw that they cut five per cent from the cards, so I take five per cent off.

Trial Examiner Norwood: Then it would be a guess?

The Witness: Well, somebody else might guess exactly the same way.

Trial Examiner Norwood: And if there were ten identical prices, then there would be ten guesses, would there not?

The Witness: Yes, but there might have been fifteen competitors, and five of those would guess something else.

By Mr. MacIntyre:

Q. And you have used the word "guess" in the last answers as a matter of the attempt on the part of two or more people to beat the law of probabilities in getting at the same result, is that correct?

A. Well, I have sort of forgotten about the law of possibilities.

Trial Examiner Norwood: Now, you see, it is getting technical—

The Witness: Yes. It is about the same as choice and chance, as I remember it, but what we try to do is to get at the price which will enable us to get the order.

4280 By Mr. MacIntyre:

Q. It is a matter of chance, and you say that is what you were doing, you were taking the chance of making them all the same?

A. That is right, of getting the order, I say, not of making them all the same. I don't want to be the same. I want to be a little lower.

Q. And in taking the chance to get the order and where they all turn out to be the same it is a matter of chance, is that correct?

A. So far as I know; so far as I know.

Trial Examiner Norwood: Now, that is all a matter of argument, Mr. MacIntyre.

Mr. Austin: I will say so.

Mr. MacIntyre: I want to find out what explanation he has, if he has any.

Trial Examiner Norwood: You may proceed.

By Mr. MacIntyre:

Q. Now, Mr. Drury, referring to this meeting of the conduit committee at the Biltmore Hotel on January 6, 1937, and your letter to Mr. Tolles, Respondents' Exhibit No. 283, under date of January 7, 1937, and also to Mr. Tolles' letter which is in evidence here as Commission's Exhibit No. 47, is it your testimony, Mr. Drury,
4281 that the representatives of the manufacturers who attended that meeting didn't recognize you and the other members of the conduit committee of the National Electrical Wholesalers as persons who were on that committee of that Association?

Mr. Austin: Now, just a minute. I would like to object to that question on the ground that it states a fact contrary to the record.

Mr. MacIntyre's question starts off "Now, referring to the meeting of the conduit committee at the Biltmore Hotel on January 6," and the record made less than an hour ago was precisely to the contrary; that there was no meeting of the conduit committee at the Biltmore Hotel, and when asked why he said it was because he was told to.

Now, if he wants to ask the remainder of the question eliminating that assumption, I have no objection.

By Mr. MacIntyre:

Q. Well, you and the others, you and a number of the others who met at that meeting at the Biltmore Hotel were members of the conduit committee of the National Electrical Wholesalers Association, is that correct?

A. It is.

Q. And you met together there in a conference at this meeting in the Biltmore Hotel, is that correct?

A. We were there together with a number of conduit manufacturers.

Q. Is it your testimony that the representatives
4282 of the conduit manufacturers who saw you and these others who were members of the conduit committee at this meeting didn't recognize you and the others as members of the conduit committee?

A. No.

Q. You know as a fact that these representatives of the conduit manufacturers knew that you and the other gentlemen were members of the conduit committee of the National Electrical Wholesalers Association, is that correct?

A. Well, I wouldn't say that they all did, but there was no reason why they shouldn't know.

Q. There were a number of them that you know did know—

A. Yes. Some knew, but I couldn't say that they all did.

Q. Now, you told Mr. Austin that at that meeting you used or made reference to the material which was contained in Respondents' Exhibit No. 272.

A. That is right.

Q. And that was the latest information of that kind that you knew to be in existence on that occasion?

A. That is right.

Q. Do you know why it was that immediately after that meeting or shortly after that meeting that the National Electrical Wholesalers Association took steps to have another reporf of an operating cost committee made up?

A. No, I do not.

4283 Q. But you do know, however, that it provided later information usable for the same purposes as the information contained in Respondents' Exhibit No. 272, is that correct?

A. Know what did?

Q. The 1937 report of the operating cost committee of the National Electrical Wholesalers Association?

A. Well, to the best of my knowledge the 1937 report contained a report or was a report of practically the same commodity as covered by this report.

Q. And usable in the same way, is that correct?

A. So far as I know; yes.

Q. Insofar as Respondents' Exhibit No. 272 was made use of at this meeting of January 6, 1937?

A. I couldn't say that because I don't know of any case where there was a group of wholesalers and a group of manufacturers who discussed either this report or the subsequent report.

Q. Except on this occasion of January 6, 1937?

A. It is the only one that I know of, but I am not saying that there were not others.

Q. Now, calling your attention to Commission's Exhibit No. 39-A and the statement contained therein over your name as chairman of the conduit committee of the National Electrical Wholesalers Association to the effect that "because of the increased costs, some of which
4284 will be effective January 1, 1937, we would ask the manufacturers to consider the advisability of having conduit cards show the two prices, less than 10,000 pounds, 22 per cent, gross margin, 10,000 pounds to a carload, 17 per cent gross margin."

Now, will you please explain what you meant through the use of the term "gross margin" in each of those two instances?

A. The 22 per cent is the—the common term is gross profit. The difference between the selling price and the cost is 22 per cent of the selling price.

Q. In other words, what you were asking them there then was that the manufacturers increase the margin between their net price to you for conduit and the net price—and the gross price which was to be provided for in their cards for your charging under their consigned stock agreements a difference of 22 per cent, is that correct?

A. No, no.

Q. Well, explain it to us.

A. Well, what we wanted the conduit manufacturers to do was to establish maximum prices, which if the wholesalers sold at those prices would enable them to make 22 per cent in the small quantities, and 17 per cent in the large quantities.

Q. That is to make those percentages as profit between what the cards provide for them to sell at and
4285 the prices which the manufacturers charged? Is that correct?

A. No. What we wanted them to do was to publish these prices because these are the maximum prices at which we can sell conduit inasmuch as,—and I explained it previously this morning—that practically every manufacturer sends his price cards to every contractor and every large user of conduit, so that it would be quite impossible for any wholesaler to secure more than these prices; but there is no reason why we shouldn't sell at considerable less than these prices; we or anybody else.

Q. What you are really desiring then in that instance was that the manufacturers establish a resale price on their cards, if you desired to use them, with a mark-up of 17 per cent and 22 per cent above the prices which they were to charge you for the same merchandise, is that correct?

A. Substantially so.

Q. Well, what about that isn't correct?

A. It was a suggested price; a suggestion, rather, that the prices which they published bear these margins, we to be left free to charge whatever price we saw fit to make at the various markets.

Q. But you were asking them to publish price cards suggesting those markets as retail prices?

A. These are maximum prices. We couldn't get any more than these, but we could sell for less than these.

4286 Q. But you desired those as mark-ups by that amount above the prices you had paid the manufacturers, is that correct?

A. That is right.

Q. Now, you used the words "actual cost" in referring to those items in answer to a question that Mr. Austin asked you?

A. Yes.

Q. Is it your testimony that those gross margins of 22 per cent and 17 per cent on their quantities to which they refer were the actual costs of any one wholesaler?

A. No, no, because those would be varied costs.

Q. What did you mean then by the term "actual cost" as you used it in your reply to one of Mr. Austin's questions in reference to those two items, gross margin of 17 per cent and 22 per cent?

A. I said actual cost?

Q. Yes.

A. Well, what I had in mind was the cost based—the wholesalers' cost as based upon the card, a given card.

Trial Examiner Norwood: You are referring to average costs, are you not?

The Witness: No. I would say the wholesaler's cost of this card, card 165, and card 165 provided these margins of 22 per cent and 17 per cent, then the cost to the wholesaler would be the cost which he would have under
4287 that particular card.

By Mr. MacIntyre:

Q. In other words, you didn't mean in your answers to Mr. Austin that these 17 per cent and 22 per cent represented any actual cost, any actual cost to the wholesaler?

A. If he purchased under this card, yes.

There would have to be a relation there between the selling price and the cost, and the cost and the selling price would have to be on the same card.

Trial Examiner Norwood: You mean the particular cost that was determned upon when the card was made, is that correct?

The Witness: If purchased under a particular card.

By Mr. MacIntyre:

Q. It would be 17 per cent and 22 per cent less than the suggested resale price?

A. That is right.

Q. And that is what you meant by "actual costs"?

A. That is what I meant by "actual costs," yes.

Q. Now, I call your attention to a statement that appears on that exhibit directly following the one referring to 22 per cent and 17 per cent gross margin, the statement being as follows: "The wholesalers cost of such quantities should fairly be 6 per cent from net prices,
4288 which was determined to enable the wholesaler to perform his necessary services." Now, isn't it a fact, Mr. Drury, that since about the time of this report by you there has been a jobber's compensation of six per cent discount from prices allowed by manufacturers to wholesalers?

A. I think so; it was five per cent.

Q. But it was changed to six per cent, and has remained six per cent since the time of this report or thereabouts, is that correct?

A. I think so.

(Whereupon, at 12:15 p. m., a recess was taken until 1:15 p. m.)

4289 Afternoon Session.

1:15 p.m.

Trial Examiner Norwood: Proceed.

WALTER J. DRURY thereupon resumed the stand and testified further as follows:

Cross-Examination (Continued) by Mr. MacIntyre.

Q. Mr. Drury, referring again to Commission's Exhibit 39-A and to those items designated therein as 22 percent gross margin and 17 percent gross margin which we were discussing before lunch.

A. Yes.

Q. And you told us that those represent items for which you hoped manufacturers would issue resale price cards providing for those mark-ups.

Now, really what you were wanting to do there was to get these manufacturers to issue those cards so you would have the opportunity of charging up to that limit on any conduit you sold, was it not? Or having the privilege of cutting below that on any conduit that you sold; was that what was in your mind?

A. Naturally, up to or below that.

Q. In other words, you wanted that up there to protect you up to that point on any sales you made, if you
4290 wanted to go up to that point with your resale price?

A. Yes.

Mr. MacIntyre: That is all.

Redirect Examination by Mr. Austin.

Q. Mr. Drury, in cross-examination Mr. MacIntyre asked you several questions about warehouse stocks, manufacturers' local warehouse stocks?

A. Yes.

Q. Now, is it a fact that a manufacturer, to your knowledge, had a local warehouse stock and at the same time sold to wholesalers in the same city for warehousing in their warehouses?

A. Yes.

Q. When that manufacturer sold out of his warehouse stock to wholesalers, how did the price which he charged

those wholesalers compare with the price which he charged you for deliveries to your warehouse stocks?

Mr. MacIntyre: Now, I do not know that this witness has been qualified to speak on that matter. There has been no foundation laid to show he has knowledge of all of the prices that the manufacturers have charged everybody else.

Trial Examiner Norwood: He can testify to one price if he wanted to, if he knows it. I will ask him to answer that and make that a factual answer from his own experience.

4291 That is, if you know it.

The Witness: I do. Yes, that the price which they charged what we called non-stocking wholesalers was approximately the same as we paid for the conduit when shipped to us in carload lots.

By Mr. Austin:

Q. Now, if the non-stocking wholesalers went to the local manufacturers' warehouse and ordered delivery from that warehouse to a job in that city so that they did not handle the conduit at all in any way, how did the price charged the non-stocking wholesalers compare with the price charged you for delivery of conduit to your warehouse?

Mr. MacIntyre: I object to the question on the same ground as the objection to the last question; that is, there has been no foundation laid to show this man knows what manufacturers charged other people.

Trial Examiner Norwood: Overruled.

The Witness: We, at times, purchased from this local warehouse and the price, as I remember it, was approximately the same.

I stated that a moment ago.

Mr. MacIntyre: You said to the purchasers of yours.

The Witness: Yes.

A non-stocking purchase. I said the price was

4292 approximately the same. I am not positive as to whether or not they made some charge for trucking from their warehouse to the job or not; I rather think they did make a nominal charge.

By Mr. Austin:

Q. But, without considering any nominal charge for trucking to a job, the price charged the non-stocking wholesaler by the manufacturer selling from his local warehouse,

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compared in what way with the price he charged you for delivery to your warehouse?

A. Approximately the same.

Q. Mr. Drury, did manufacturers who attended meetings of your conduit committee always stay throughout the entire meeting of the conduit committee?

A. I don't think they did.

Q. Mr. Drury, is it a fact that anyone in the electrical business—contractors, jobbers, wholesalers—can secure any manufacturers' price cards by asking for them?

Mr. MacIntyre: Now, I object to that. There has been no foundation laid to show this witness has knowledge of that and, in fact, on cross-examination the indications were, in the answers he gave to my questions, that he did not know.

Trial Examiner Norwood: Do you know about that?

The Witness: I do not.

4293 Trial Examiner Norwood: He does not know.

The Witness: I have no way of knowing.

Trial Examiner Norwood: Proceed.

Mr. Austin: That is all for me, Your Honor.

Mr. Stewart: If Your Honor please, I would like to ask some questions.

Trial Examiner Norwood: Mr. Stewart.

By Mr. Stewart:

Q. Mr. Drury, what, in addition to an argument on the part of the jobbers and a presentation of facts in support of the argument in favor of increased compensation, took place at the Biltmore meeting?

A. We did not have any argument about increased compensation at the Biltmore Hotel.

The only purpose of the Biltmore meeting was for the wholesaler to give the manufacturers some information as to what the wholesalers' costs of handling conduit were.

Q. What, in addition to that activity, took place at the Biltmore meeting, if anything?

A. Well, we had a few drinks. That's about all.

Q. How long prior to these various resolutions which have been put in evidence on the part of the conduit committee had the consigned stock method of doing business prevailed in the conduit industry?

A. As I said this morning, my first knowledge of
4294 it was back around 1912. If you want the information, my understanding has always been that was the

way they introduced the use of conduit. There was not enough demand for it to justify wholesalers to stock it and they started out by consigning it so I think I would be perfectly safe to say it started with the birth of the industry.

Q. Mr. MacIntyre asked you in cross-examination in connection with the matter of warehouse stocks as to whether the situation which he described prevailed in connection with other manufacturers.

I would like to ask you as to whether or not the situation which he called your attention to also prevailed in connection with the same manufacturers?

Mr. MacIntyre: I object to the leading of the witness on that question.

Trial Examiner Norwood: Read it, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Mr. MacIntyre: I think his statement of the testimony in the previous questions is improper on that.

Trial Examiner Norwood: Overruled.

Answer the question.

The Witness: I don't know just what the situation is that you refer to.

4295 Mr. Stewart: That is all. Thank you.

Mr. Robison: Mr. Trial Examiner, I would like to ask a few questions by way of explanation.

Trial Examiner Norwood: Proceed.

By Mr. Robison:

Q. In answer to a question on cross-examination you said, in substance, that when you—that is, your company—sell at a place within your territory where some local jobber is selling, in that connection you mentioned by way of example Passaic.

A. Yes.

Q. You found it necessary to give the same service and same sort of delivery which the local jobber gives, but you did not necessarily sell at the same price?

A. Yes.

Q. You recall that answer?

A. That's right.

Q. Did you mean by that that you sometimes can sell at a somewhat higher price than the local jobber sells at?

Mr. MacIntyre: I object to the leading character of the question. Instead of asking the witness what he meant, the interrogator is asking if he did not mean something which he wanted him to mean.

Trial Examiner Norwood: I think the question is certainly leading, but I do not think it is very harmful.

4296 Mr. Robison: I did not ask if he did not mean that. I asked if he did mean that.

Trial Examiner Norwood: All he has to do is say yes. You may answer the question.

The Witness: Yes.

Trial Examiner Norwood: I will ask counsel not to lead him any further.

By Mr. Robison:

Q. When you find you can sell at a somewhat higher price than the other man is selling at, what do you offer to the customer as an inducement to pay the higher price?

A. Well, we—there are a great many things you could offer. You could offer service. You could offer quality. You could offer long continued relationship or you might have reciprocal relations or you might be friends or somebody might be a relative. A great many things enable you to get a higher price.

Q. You have mentioned those as being things you may offer.

Do you in practice in selling urge upon customers those various points you have mentioned or some of them for one customer and some for another?

A. Surely.

Q. That is something that actually exists and takes place in the conduct of your business, is it?

4297 A. Yes. All branches of it.

Q. I am referring particularly to rigid conduit.

A. Yes.

Q. Which is the only material we are interested in here.

A. Yes.

Q. Your answers have reference to rigid conduit?

A. Yes.

Mr. Robison: That is all.

Recross Examination by Mr. MacIntyre.

Q. On this question of quality that you made reference to in your answer to Mr. Robison's questions, you have found that some of your customers have become so attached to the quality of conduit manufactured by one producer that they will even pay a premium for it over and above

what they would pay for the same quantity of the same size of conduit manufactured by another producer; haven't you?

A. That is true with some customers; yes.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Thank you, Mr. Drury.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. Austin: Mr. Latham.

LESLIE E. LATHAM was thereupon called as a
4298 witness on behalf of the Respondents and, having been first duly sworn, testified as follows:

Direct Examination.

Trial Examiner Norwood: Please give your full name to the reporter.

The Witness: Leslie E. Latham.

By Mr. Austin:

Q. Mr. Latham, you have given your full name for the record have you not?

A. Yes.

Q. What is your present position?

A. President of E. B. Latham and Company.

Q. Where is E. B. Latham & Company located?

A. 250 Fourth Avenue, New York City, and 1010 Broad Street, Newark, New Jersey.

Q. Prior to becoming president of E. B. Latham and Company, what position did you hold there?

A. Vice president.

Q. How long have you been a representative of E. B. Latham and Company in N. E. W. A.?

A. Approximately fifteen years.

Q. What positions have you held in N. E. W. A.?

A. Chairman of various committees, member of various committees, chairman of executive committee.

Q. Can you tell me what period of time you were
4299 chairman of the executive committee of N. E. W. A.?

A. In May of 1936—May 1938. Through May 1938.

Q. Are you sure that the month you have stated is the correct month in those years?

A. Might have been June.

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Q. Can you tell me during what period of time you were a member of N. E. W. A.'s conduit committee?

A. I believe I became chairman of the conduit committee immediately following my term of office as chairman of the executive committee.

Q. That would be 1938?

A. 1938 through to the present.

Q. You are still a member of the conduit committee?

A. I am still chairman of the conduit committee.

Q. In other words, you have, for the entire period of time you have served on the conduit committee, been its chairman?

A. To the best of my recollection that is correct.

Q. Mr. Latham, I show you Commission's Exhibit 39-E, 40-C, 40-D, and 41-A and B, which are committee reports of the conduit committee for October 1938, May 1939, and October 1939, and ask you whether these reports were written by you as chairman of the conduit committee at semi-annual conventions of N. E. W. A. (Counsel hands document to witness for examination.)

4300 A. (Witness examines documents.)

They were.

Q. Each of those exhibits which you have in your hand refers to an agency plan of distribution for conduit.

Will you tell us how long, to your own personal knowledge, conduit has been sold on a consignment basis?

A. Been sold on a consignment basis ever since I can remember, and that goes back to 1914, my induction into the business.

Q. Can you tell us why, in referring to the sales agency plan in conduit committee reports written by you, after stating the plan did not operate as designed, you and your committee felt justified in stating wholesalers approved the sales agency plan of distribution?

A. There are numerous answers to that question.

I think many of the smaller wholesalers who were operating on small amounts of capital welcomed an opportunity to buy on a consignment basis. I believe it did have the effect of creating more actual conduit wholesalers rather than brokers.

4301 By Mr. Austin:

Q. Now, Mr. Latham, did you or the conduit committee while you were its chairman, ever take any

4302 action with respect to the sales agency plan other than

to report thereon as indicated in the exhibits you hold in your hands?

A. None whatever.

Q. Each of the reports in evidence of the conduit committee which are the three you hold in your hand and written by you as chairman of the committee refers to the possibility of the reinstatement of local warehouse stocks.

Will you tell me whether, to your knowledge, manufacturers' warehouse stocks of conduit were ever completely eliminated?

A. You want my opinion on that or a positive answer?

Q. I asked for what you know.

Trial Examiner Norwood: What you know about it.

The Witness: I cannot answer that I know anything definite.

By Mr. Austin:

Q. Each of those reports that you have written indicate that you and your committee felt that local warehouse stocks of conduit were uneconomic; that is the word used. Will you tell us why you, as a member of that committee, felt it would be uneconomical for manufacturers to maintain local warehouse stocks in various cities?

A. We felt it represented a duplication of selling costs and handling costs.

Q. Can you tell me, with respect to the complete elimination of warehouse stocks, whether there has come
4303 to you, in the ordinary course of your business, information with respect to whether or not warehouse stocks were completely or were not completely eliminated?

Mr. MacIntyre: I object to the testimony for the truth or the accuracy of it as being hearsay of this character.

Trial Examiner Norwood: Didn't he just tell us he did not know that?

Mr. Austin: He stated, sir, he did not know of his own knowledge.

Trial Examiner Norwood: Read the question.

(The question referred to was read by the reporter.)

Mr. Austin: I asked if he ever had information given to him in the ordinary course of business.

Mr. MacIntyre: It is hearsay, and hearsay of that character will not help us at this point. It is too indefinite and of no value.

Trial Examiner Norwood: In the ordinary course of the business of the committee he was on?

Mr. Austin: Yes, or as a head of the wholesale house.

Mr. MacIntyre: Hearsay of that kind should not be taken for the truth or accuracy of it at this time in this way.

I object to it.

Trial Examiner Norwood: Objection overruled.

4304 The Witness: My answer to that is that it had been reported to me warehouse stocks had not been discontinued at many centers.

Trial Examiner Norwood: Were there any particulars so that you could tell us which ones were not discontinued and the circumstances surrounding their discontinuance or their continuance?

The Witness: I recall the particular points in two cases, but not the manufacturers.

Trial Examiner Norwood: Were there special conditions at those points different from other places?

The Witness: Yes.

Trial Examiner Norwood: What were they?

The Witness: The distributors in those areas were sufferers of what they were of the opinion was unfair competition, by virtue of competing with a manufacturer's warehouse stock whereas they had the cost of handling and trucking and warehousing to absorb in their cost.

Trial Examiner Norwood: What were these points?

The Witness: My recollection for the moment is Chicago and Pittsburgh.

Trial Examiner Norwood: Proceed.

By Mr. Austin:

Q. Now, Mr. Latham, did your conduit committee while you were its chairman, ever take any action in connec-

4305 tion with manufacturers' local warehouse stocks other than those reports with respect to the same as indicated in these exhibits you hold in your hand?

A. None whatever.

Q. Mr. Latham, the conduit committee reports which were written by you in October 1938 and October 1939, Commission's Exhibits 39-E and 41-A and B make reference to the possible elimination of black enameled conduit.

Can you tell me the position of your committee with respect to that situation and the reasons which were in your mind at the time with respect to the elimination of black enameled conduit?

A. The principal reason for the recommendation of elimination of black conduit was due to the ever-decreasing demand for black, the necessity for carrying a duplicate stock of both black and white conduit in the same sizes, elbows, fittings, boxes and all other parts of a wiring system in two finishes which added to our cost of doing business.

Q. Mr. Latham, did you or your conduit committee while you were chairman of the committee, ever do more than to report the status of an investigation currently being made into the relative merits of galvanized conduit and black enameled conduit?

A. No.

Q. To your knowledge, did your committee, while
4306 you were its chairman, take any action in connection with the investigation which you reported upon?

A. No.

Q. Now each of the conduit committee reports in evidence, which you hold in your hand, written by you, make reference to requests made to manufacturers by your committee, and I quote, "to limit price advances to not to exceed five percent steps."

The first report signed by you, that of October 18, 1938, in dealing with this subject, begins with the language:

"Following up previous recommendations of our conduit committee."

Will you look at Commission's Exhibits 39-A, B, C, D and 40-A and B, the conduit committee reports prior to your chairmanship, and point out to us where the conduit committee made any such recommendations.

A. Well, I presume for the sake of brevity, there is no such—

Q. Don't presume.

A. (Continuing) —recommendation in here.

Q. No. Don't presume or assume anything.

A. I do not know without reading these lengthy reports.

Q. Look through them and tell us what you find.

Trial Examiner Norwood: Just tell us what you know.

The Witness: May I ask that the question be read?

4307 Mr. Austin: Will you please read the question?

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: I see no evidence of it.

By Mr. Austin:

Q. If you cannot find any such recommendations in the prior reports, can you tell us what you meant by the term "following up previous recommendations of our conduit committee," when you used it in the report I have referred to?

A. I probably had reference to—

Mr. MacIntyre: Now, I object.

The Witness: I—

Trial Examiner Norwood: Wait a minute.

Mr. MacIntyre: I object to the witness stating what he probably had in mind, unless he is able to tell us at this time with some degree of certainty what he did know.

Trial Examiner Norwood: I think counsel's point is well taken.

Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Can you not tell us that?

The Witness: I had been chairman of several other 4308 committees in the Association.

Trial Examiner Norwood: Yes.

The Witness: Or identified with them.

And that practice of recommending increases to five percent steps for the purpose of preventing or discouraging speculation had become more or less of a general recommendation of all committees and I presumed that perhaps that same condition had been made in the conduit reports previously.

By Mr. Austin:

Q. Mr. Latham, can you tell us what was in your mind when you placed that recommendation in that report?

A. I had in mind the matter of preventing, in so far as it would discourage, speculative buying.

Q. Will you tell us whether your committee or you ever took any action with respect to this recommendation other than to include it in your conduit committee reports?

A. No.

Q. Now, Mr. Latham, each of the conduit committee reports signed by you and in evidence here refers to recommendations made with respect to differentials to meet the wholesalers' cost of handling conduit.

Were such recommendations based upon cost surveys in connection with the handling of conduit at wholesale made by N. E. W. A.?

A. Yes.

4309 Q. Can you tell us what was in your mind at the time you made those recommendations?

A. We felt we had gone to considerable expense and trouble to correlate information on distributors' costs of handling the various commodities we distribute, and we felt they were a good basis for manufacturer to look to as a guide in offering us recommended resales.

Q. Did you, or your committee while you were its chairman, ever take any action with respect to such recommendations other than to include them in your conduit committee reports?

A. No.

Q. You have been chairman of the executive committee of N. E. W. A., as well as chairman of its conduit committee and a member of other committees.

Will you tell us what has been your understanding as to the purpose of preparing commodity committee reports and sending such reports to manufacturers and members of N. E. W. A.?

A. To acquaint them with the deliberations of our meeting and in order that they might, if they felt such recommendations were justified and reasonable, be an aid to guide them in their relations with their distributors. That related to many things, of course, those reports.

Q. Did you, as a member of N. E. W. A., feel under any obligation to follow recommendations made by committees of N. E. W. A.?

4310 A. No.

Q. Did you feel, as chairman of the conduit committee, or while you were acting as chairman of the Association, that manufacturers were under any obligation to you, as chairman of either the commodity committee or the Association, to follow or accept recommendations made by your commodity committee?

A. No.

Q. When you were holding meetings of this commodity committee—that is, the conduit committee—was it your understanding that manufacturers who attended those meetings were representatives of any particular organization or Association?

A. No.

Q. Mr. Latham, did you attend a meeting at the Biltmore Hotel on January 6, 1937?

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A. I did.

Q. Were you at that time a member of the conduit committee of N. E. W. A.?

A. No.

Q. Were you invited to attend that meeting as a representative of N. E. W. A.?

A. I was, but I did not attend in that capacity.

Q. Can you tell us whether there were present at that meeting representatives of wholesalers who were not then members of N. E. W. A.?

4311 A. I don't recollect.

Q. Will you tell us what was your understanding at that time of the purpose of that meeting at the Biltmore?

A. My recollection is that the agency plan was being discussed—the agency plan of distribution—and we were to submit for the manufacturers' information such knowledge as we had in regard to distribution costs.

4312 Q. Now, at the meeting at the Biltmore Hotel was the subject of the cost of distribution of conduit at wholesale discussed?

A. I presume it was, but I don't recall; it must have been.

Q. Now, did you present your views at that meeting with respect to your own costs of doing business?

A. No.

Q. When you left the meeting at the Biltmore Hotel did you feel in your own mind that you were obligated in any way to take any action with respect to any of the subjects discussed at that meeting?

A. No.

Q. Do you know Walter Drury of the Graybar Electric Company?

A. I do.

Q. Was he present at that meeting?

A. He was.

Q. Do you know whether Mr. Drury presented to the manufacturers cost figures relating to the distribution of conduit?

A. I believe he did.

Q. Did you know at the time what figures were presented by him?

A. I did.

4313 Q. Can you tell us what those were?

A. The figures presented by Mr. Drury were the

cost figures as arrived at by our cost studies committee of 1933.

Q. Mr. Latham, can you give us any reasonably accurate estimate of the percentage of conduit sold at card prices by the industry during the period from say 1933 to 1940?

A. No.

Q. Does E. B. Latham & Company receive so-called freight adders from its suppliers?

A. Yes.

Q. What use, if any, does your company make of such adders?

A. We use a freight adder in figuring prices on mill shipments direct to our customers.

Q. Do you use them for any other purpose?

A. No.

Q. Did you ever meet Mr. Herbert S. Blake, Sr.?

A. Yes.

Q. Where?

A. At the Biltmore meeting in January, 1936, I believe.

Q. Were you personally introduced to Mr. Blake at that meeting?

A. I don't recall; I probably was.

Q. Did you discuss with him at that meeting any of 4314 the subjects we have covered here today?

A. No.

Q. Do you know what the Organization Service Corporation is?

A. Only by hearsay.

Q. Have you to your knowledge ever met a Mr. Robert S. Booth?

A. Not to my knowledge.

Q. Did your conduit committee while you were its chairman ever have any correspondence or dealings with Herbert S. Blake, the Organization Service Corporation, or Robert S. Booth?

A. None whatever.

Q. Now, you have been chairman of the National Electrical Wholesalers Association and you have also been chairman of its conduit committee, is that correct?

A. Yes.

Q. Have you in either capacity aided in the preparation or dissemination of a list of recognized jobbers or dealers?

A. No.

Q. Did your conduit committee while you were its chair-

man ever take part in the preparation or dissemination of a list of recognized jobbers or dealers?

A. Absolutely not.

Q. Now, you have stated here, Mr. Latham, that
4315 for a period of some years conduit has been sold on a consignment basis, is that correct?

A. That is right.

Q. Does that mean that E. B. Latham & Company has never purchased conduit for its own account?

A. Oh, no.

Q. Has E. B. Latham & Company been able to purchase, and has it purchased, conduit for its own account, throughout the period of time that you have been its vice president and president?

A. Yes.

Q. Now, will you please tell us how you purchased that conduit that you took title to?

A. We may have purchased it out of consigned stock, if market conditions justified it. We might have bought it in carloads if a proper offer were made to us by manufacturers.

Q. Now, did you feel free at any time to purchase conduit by any of the methods outlined by you?

A. Absolutely.

Q. What was your purpose in purchasing conduit outright?

A. We might have had occasion to buy it in a market where we couldn't obtain sufficient material from our regular manufacturers. We might have purchased it in the
open market due to the inability of our regular
4316 manufacturers to supply our requirements. We might also have had occasion to take advantage of a rising market to protect ourselves.

Q. Does E. B. Latham & Company sell conduit f.o.b. its warehouse?

A. No.

Q. Does E. B. Latham & Company sell conduit f.o.b. its customers' warehouse or job?

A. Yes.

Q. Why does it sell conduit in that way?

A. That is the accepted custom of doing business in this market.

Q. Now, is there any difference in your method of sale of conduit when you are selling from a consigned stock

and when you are selling from stock owned by your company?

A. Will you restate that question?

Trial Examiner Norwood: Read the question, please.

(The question referred to was read by the reporter.)

The Witness: No.

By Mr. Austin:

Q. You have stated that your sales are f.o.b. the customers' warehouse or job, is that correct?

A. Yes.

Q. Now, when you sell that way do you charge
4317 for delivery from your warehouse to the job?

A. No.

Q. Why not?

A. Because it isn't the method by which conduit is sold.

Q. Well, what do you mean by that, sir?

A. We absorb that in our cost of doing business.

Q. And why do you absorb it?

A. Because it is the customary method of selling conduit in this market. The customers desire a delivered price, and that is the customary thing to do.

Q. Well, if the customers desire it at delivered price why can't you give them a delivered price with the delivery charges in it?

A. Well, approximately that is what we do. We absorb it. If we absorb it the price is in there. Our cost of doing business includes that cost of delivery.

Q. I see. Have you ever quoted conduit to your customers f.o.b. the factory?

A. Yes.

Q. Now, referring again to your chairmanship of the conduit committee have you as chairman of that committee or has the committee while you were its chairman ever recommended or urged that conduit be sold on a delivered price basis?

A. No.

Q. Have you ever made such recommendation to
4318 your suppliers acting for E. B. Latham & Company as its president?

A. No.

Trial Examiner Norwood: The hearing is now adjourned to reconvene in the Conference Room at the office

of Cravath, deGersdorff, Swaine & Wood, at 15 Broad Street, New York, New York, at 1:30 p. m. on Tuesday, January 13, 1942.

(Whereupon, at 2:15 p. m., January 19, 1942, the hearing in the above-entitled matter was adjourned.)

4340 Mr. Robison: Mr. Examiner, before Mr. Austin proceeds with the further examination of Mr. Latham, I would like to clean up some matters which were left open on the record last Wednesday at the time when Mr. Hodkinson testified.

Trial Examiner Norwood: If counsel is going to offer corrections to the record—

Mr. Robison: They are not corrections, Mr. Examiner.

Trial Examiner Norwood: Then, you may proceed.

Mr. Robison: Mr. MacIntyre asked me to endeavor to obtain from the managing director of the National Electrical Manufacturers Association a list of the membership with their company affiliations, of the Code Advisory Committee as of September 1933, and the same information regarding the executive committee of the National Electrical Manufacturers Association as of October 20, 1933.

In response to a letter which I wrote him, Mr. Donald, the managing director, has sent me a list of those
4341 two committees, and I am going to hand it to Mr. MacIntyre. (Handing paper to Mr. MacIntyre.)

Trial Examiner Norwood: Do you want that marked for identification?

Mr. Robison: I think it would be wise.

It is a matter that came up really in connection with the cross-examination, and I suppose that Mr. MacIntyre, being on cross-examination, would rather make it a Commission's Exhibit.

Trial Examiner Norwood: Off the record, please.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record, please.

It will be marked as Commission's Exhibit No. 738 for identification.

The papers furnished by Mr. Robison to Mr. MacIntyre will be marked as Commission's Exhibits Nos. 738-A and 738-B.

(The documents referred to were marked "Commission's Exhibits Nos. 738-A and 738-B" for identification.)

Mr. Robison: If Mr. MacIntyre wishes to put that in evidence at this time, I would have no objection to his doing so.

Trial Examiner Norwood: If he so desires, he may offer it later.

4342 Now, call your next witness, please.

Mr. Robison: Just a moment, please, Mr. Examiner.

There is one other thing that was left open, and that was that Mr. Hodkinson said that he thought he could produce the No. 1 price card of the Safety-Armorite Conduit Company.

Now, since then he has sent me such a card marked "Card No. 1, August 1, 1913" of that company, showing its list prices and its San Francisco warehouse basing discount. It was sent with something of an apology that he could not find the one showing Pittsburgh basing discounts.

I offer this No. 1 card in evidence.

Trial Examiner Norwood: It will be marked as Respondents' Exhibit No. 285 for identification.

(The document referred to was marked "Respondents' Exhibit No. 285" for identification.)

Mr. Robison: Now, further in connection with Mr. Hodkinson's testimony, I introduced what I supposed was one price card of the American Circular Tube Company.

It was marked as Respondents' Exhibit No. 257-A, 257-B, 257-C, and 257-D, and I now find that they were duplicates of two copies of the same paper.

The 257-C and 257-D is a duplicate of Exhibit No. 257-A, and 257-B, and I ask the privilege of withdrawing Exhibit No. 257-C and 257-D.

4343 Trial Examiner Norwood: Is there any objection?

Mr. MacIntyre: No, sir.

Trial Examiner Norwood: Let the record show that Respondents' Exhibit No. 257-C and 257-D are ordered withdrawn as being duplicates of exhibits that are now already in evidence.

Mr. Robison: Now, I have one further paper, and I would like to offer it.

It has been marked for identification.

Trial Examiner Norwood: Yes, go ahead.

Mr. Robison: I offer in evidence a certificate of the managing director of NEMA showing an extract from

the minutes of the meeting of the Executive Committee of that Association on July 27, 1934, having reference to the resignations of the Mohawk Tube Company, Inc.; the Youngstown Sheet & Tube Company, and the Enamel Metals Company, all accepted as of August 31, 1934; also Clayton Mark & Company.

Mr. MacIntyre: May I see that?

Mr. Robison: Yes. (Handing paper to Mr. MacIntyre.)

Mr. MacIntyre: I have no objection to Respondents' Exhibit No. 286.

Trial Examiner Norwood: It will be received in evidence.

(The document referred to was marked "Respond-
4344 ents' Exhibit No. 286" in evidence.)

Mr. Stewart: Now, Mr. Examiner, I offer in evidence as Respondents' Exhibit No. 287-A and 287-B a certified copy of an extract from the minutes of NEMA showing the action of NEMA with respect to the dissolution of the Rigid Steel Conduit section on April 27, 1934.

Trial Examiner Norwood: Is there any objection?

Mr. MacIntyre: No, sir.

Trial Examiner Norwood: It will be received and marked.

(The document referred to were marked "Respondents' Exhibit No. 287-A and 287-B" in evidence.)

4349 Mr. Austin: Mr. Latham, will you resume the stand?

LESLIE E. LATHAM resumed the stand and testi-
4350 fied further as follows:

Direct Examination (Continued) by Mr. Austin.

Q. Mr. Latham, have you at my request taken from your files, that is, the files of E. B. Latham & Company as many Government bids filed by E. B. Latham & Company as you were able to find?

A. I have.

Q. Mr. Austin: Now, so that Mr. MacIntyre can use these for cross-examination, I have brought these here (indicating).

Mr. MacIntyre: What are they?

Mr. Austin: They are copies of Government bids filed by Mr. Latham's company.

Trial Examiner Norwood: Let the record show that counsel is producing a great number of bids.

By Mr. Austin:

Q. Now, Mr. Latham, have you in the past two months, that is, since November, when I first asked you to secure these, looked through them and studied them yourself?

A. Yes.

Q. Did I ask you to prepare for me a tabulation of Government bids filed by E. B. Latham & Company in so far as you have them in your records?

A. Yes.

4351 Q. And were you able to do that, sir?

A. I did.

Q. Were you able to file, or were you able to prepare a tabulation of Government bids made by E. B. Latham & Company?

A. I beg your pardon? A tabulation? I just don't quite get your question there.

Mr. Austin: May I restate the previous question, Mr. Examiner?

Trial Examiner Norwood: Yes.

By Mr. Austin:

Q. Mr. Latham, did I ask you to prepare, if you were able to, a tabulation showing the percentage of Government bids filed by your company, such as you had made off of card prices?

A. Oh, yes.

Q. And were you able to prepare such tabulation?

A. Yes, I was, in regard to one card, I went into that.

Q. Well, we will have to get at this again.

I am asking you about Government bids filed by your company as shown here by these documents on the table (indicating).

A. Yes.

Q. Now, were you able to prepare any tabulation of on or off card prices taken from those Government bids?

A. Oh, no, not at all.

4352 Q. And why not, sir?

A. Well, of course the work would have been tremendous to prepare the prices of every bidder on that; these bids with the on card and off card prices.

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It would simply mean a tremendous job that I couldn't undertake.

Q. Do some of these documents which I have placed on the table there bear memoranda such as this (indicating) which were made in the ordinary course of your business?

A. Yes.

Q. Will you tell me what those memoranda purport to show?

A. Well, these reports are tabulations of the extracts of the bids submitted in connection with the attached invitation to bid.

Q. And where were those memoranda made?

A. They were made at the reading off of the bids in most cases, and in certain other instances we have attached extracts that were sent to us by different bonding agencies and other different people who make these tabulations and who sent them out to bidders.

Q. Now, you have stated that you have been through these bids yourself, have you not?

A. Yes.

Q. Now, Mr. Latham, I would like you to tell me, if you can state, whether a substantial portion of those
4353 bids were filed by E. B. Latham & Company at prices less than the card prices then currently in effect?

4354 Mr. Austin: Will you read the question again, please?

Trial Examiner Norwood: Read the last question, please.

(The question referred to was read by the Reporter.)

The Witness: I can answer that definitely as yes.

By Mr. Austin:

Q. Now, Mr. Latham,—

Trial Examiner Norwood: Well, how about the other portion of it?

Were some of them filed at the card prices?

The Witness: Your Honor, I refer to the general examination of these bids when I say that in practically every instance where I examined the prices, the prices were off the card as perhaps other testimony that I may be
4355 able to give will produce, I believe.

Trial Examiner Norwood: Very well.

By Mr. Austin:

Q. Well, now, Mr. Latham, let's get that point in the record.

A. Yes.

Q. You are not testifying that none of these were made at card prices, are you?

A. Oh, no; not at all; no.

Trial Examiner Norwood: But you know that some of them were made at card prices?

The Witness: I would say yes.

By Mr. Austin:

Q. Now, Mr. Latham, did you at my request have employees of E. B. Latham & Company, under your supervision, pull your invoices for the period of time covered by card 76?

A. I did.

Q. I mean by that invoices covering the distribution and sale of conduit?

A. I did.

Q. Now, did you have your employees, having pulled those invoices, prepare a tabulation showing the percentage of sales of conduit by E. B. Latham & Company in terms of dollar volume on and off card prices during the period of time that card No. 76 was in effect?

4356 A. Yes.

Q. Now, Mr. Latham, I show you—

Mr. Austin: Will you mark this for identification, please?

Trial Examiner Norwood: We will have a ten-minute recess while the Reporter is marking the exhibits.

They will be marked as Respondents' Exhibits 290-A to 290-Z-1 for identification.

(The documents referred to were marked "Respondents' Exhibits Nos. 290-A, 290-B, 290-C, 290-D, 290-E, 290-F, 290-G, 290-H, 290-I, 290-J, 290-K, 290-L, 290-M, 290-N, 290-O, 290-P, 290-Q, 290-R, 290-S, 290-T, 290-U, 290-V, 290-W, 290-X, 290-Y, 290-Z, 290-Z-1" for identification.)

(A short recess was taken.)

Trial Examiner Norwood: You may proceed, gentlemen.

Mr. Austin: May I ask the state of the record, please? I mean, the last question and answer there?

Trial Examiner Norwood: Yes, read it, please.

(The questions and answers referred to were read by the Reporter.)

By Mr. Austin:

Q. Mr. Latham, I show you Respondents' Exhibits 290-A to 290-Z-1 for identification, and ask you if that is the tabu-

lation that was made by employees of E. B. Latham
4357 and Company under your direction (handing papers to witness.)

A. It is.

Q. Now, Mr. Latham, the top page is the drawing together of the facts shown in the succeeding pages, is that correct?

A. That is correct.

Q. On the succeeding pages will you tell us what the first column is?

A. The first column is the date of the invoice.

Q. And the second column?

A. It is the name of the customer.

Q. And what is the next column?

A. The number of our folio invoice.

Q. And the next column?

A. The dollars represented in on card prices.

Q. And the next?

A. The dollars in the case of each invoice of off card prices.

Q. Now, I notice on Respondents' Exhibit No. 290-I for identification that there is a third column (indicating).

A. Yes.

Q. Will you tell me what that is?

A. That represents the sale of conduit that was made against future delivery contracts of specific building jobs.

Q. Now, Mr. Latham, was it possible for you to determine from the records at hand at the time this tabula-
4358 tion was being made whether or not contract prices were on or off card prices at the date the contract was taken?

A. No.

Q. Now, are these the invoices—

Mr. MacIntyre: May I ask that the reporter read the question that precedes this last one, and the answer to it?

Trial Examiner Norwood: Yes. Read the preceding question and answer, please.

(The questions and answers referred to were read by the reporter.)

Trial Examiner Norwood: You may proceed.

By Mr. Austin:

Q. Mr. Latham, are these the invoices that were pulled by your employees?

A. Yes.

Q. Did you personally go through those invoices, and from your knowledge of the business done by E. B. Latham & Company during the period that card 76 was in effect pull from that entire group of invoices those invoices representing the deliveries made under contracts?

A. Yes.

Q. Now, the top sheet of this Respondents' Exhibit No. 290-A for identification is the final tabulation, is it not?

A. That is correct.

4359 Q. It also contains several colums?

A. Yes.

Q. Will you explain for me what this first column is?

A. The first column is the number of the sheet in sequence attached.

Q. And the second column?

A. The second column is the value in dollars of material sold on the card by sheet numbers.

Q. And the third column?

A. That represents the dollar volume that conduit was sold on each sheet off the card.

Q. And the fourth column?

A. It represents the value of material sold on specific building job contracts on each sheet.

Q. Which, as I understand it from your testimony, are the contracts, or rather are the invoices which you personally pulled from this group as being invoices representing deliveries made under contracts taken by your company for future delivery, is that right?

A. That is right.

Q. Now, each of these columns representing dollar figures shows totals, is that correct?

A. Yes.

Q. And I ask you to state for the record what this tabulation shows, first, as to the dollar volume—

4360 Mr. Austin: Well, I will strike that. I can see what you are thinking of. I will strike that.

Trial Examiner Norwood: Very well. You may go ahead.

By Mr. Austin:

Q. Mr. Latham, is this a correct statement, that any total dollar volume figures shown with respect to contracts in this tabulation, and any percentage figure taken therefrom is therefore not represented by you to be either an on card or an off card price as against your total dollar sales?

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A. That is right.

Mr. Austin: All right. I would like to offer this in evidence, please.

Mr. MacIntyre: May I see it, please?

Mr. Austin: Yes (handing paper to Mr. MacIntyre).

Trial Examiner Norwood: Now, are these invoices which you have there on the table all of the invoices received between the dates covered?

The Witness: These invoices in this package (indicating) are the invoices that are tabulated on that sheet, and represents our entire billing during the time that card 76 was in effect.

Trial Examiner Norwood: I see.

4361 Mr. MacIntyre: Is this offered in evidence?

Trial Examiner Norwood: Yes.

Mr. MacIntyre: I would like to ask the witness a few questions.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Will you please tell us, Mr. Latham, what percentage of the total dollar sales of conduit by your company as shown on this respondents' Exhibit 290-A was purchased by you from the manufacturers at the manufacturers' net card prices?

A. That I cannot answer, Mr. MacIntyre.

Q. Is anything on those sheets that would enlighten us on that point?

A. No.

Q. Is anything in your invoices here that would enlighten us on that point?

A. Our cost is on each one of these charge sheets, and would enlighten you.

Q. In other words, the invoices show your purchase price from the manufacturers?

A. Yes, sir, these are our statistical sheets, and in this column is our cost (indicating), and in this column is our selling price (indicating); this is the sale value, and this is the cost value (indicating).

4362 Q. When you say cost, you mean laid down manufacturers' cost to you at the point where it was shipped to you, whether it was New York or elsewhere?

A. That is right; that is our delivered cost at warehouse, that does not, of course, include any overhead.

Q. I am talking about the manufacturers' charges to you?

A. Yes, sir, billing to us.

Mr. MacIntyre: If Your Honor please, I must object to the tabulation because it is set up in such a manner as would mislead one as to the percentages of sales of conduit made by these respondents at, on or off car prices.

Trial Examiner Norwood: Made by this respondent, do you mean?

Mr. MacIntyre: Made by the respondents, including those sales to him, and his resales of it to others.

Mr. Austin: If Your Honor please, I did not believe and I still do not believe that it is up to Mr. Latham and E. B. Latham Company to try to show anything other than the percentages of sales made by his company on and off card for the period in question.

Now, we picked the period of card 76, because it seemed apparent to me from the Commission's case that Mr. MacIntyre thought card 76 was the very innards of this business. I noticed very carefully in Washington and other points the objections that Mr. MacIntyre made to simi-
4363 lar tabulations. It seems to me that I have met them all as brought out in the entire examination that we have conducted. It seems to me he has brought up another ground that has no bearing upon this particular respondent.

Mr. MacIntyre: It is misleading with respect to the sales of this particular respondent.

May I ask the witness a further question that would help me in answering that question you put to me?

Trial Examiner Norwood: You may.

By Mr. MacIntyre:

Q. Looking at this Exhibit 290-A to Z-1, Mr. Latham, is there any way that you can determine from it whether the prices at which you sold any of the merchandise listed therein was at prices above the card prices of the manufacturer to you?

A. Yes, sir.

Q. How can you determine that from this exhibit?

A. By comparing it with the printed card prices attached on the back of that tabulation.

Q. These tabulations do not show sizes?

A. But the invoices do.

Q. I know, but you would have to take the invoices be-

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fore you could show from the tabulation whether or not that is so?

A. Yes, you would have to tie them together.

Q. In other words, the exhibit itself which is of-
4364 fered in evidence here would not tell you and you could not determine from it in any way whether the prices at which you sold conduit were at or above the manufacturers' card prices, could you?

A. If the tabulation shows that it was off the card, it would indicate that it was below manufacturers' price; if it was sold on the card, it would show it was sold at the manufacturers' price; therefore, it would not be above.

Q. You cannot determine from this exhibit, Respondents' Exhibit No. 290-A to Z-1 for identification, whether or not the prices at which you charged were at, above or below the manufacturers' net card price to you, can you?

A. Our costs you are referring to?

Q. Manufacturers' charge to you?

A. Well, Mr. MacIntyre, we sell the goods above cost at all time; you can take that as a positive statement.

Q. In other words, it is your assertion that all of your sales were above, and those that are listed in this Exhibit 290- were above the manufacturers' net card price to you?

A. Yes, sir.

Q. But there is no showing in this exhibit how much above those sales were made by you?

A. No, unless you tie it in with the others.

Q. There is no showing on the exhibit itself to that effect?

4365 A. It ties in a specific invoice number with a specific invoice that is in this group.

Q. And if this were in evidence and the invoices were not, you could not determine?

A. That is correct.

Mr. MacIntyre: My objection still stands for the reasons stated.

4366 I overrule the objection and receive this tabulation, with the understanding that all of these invoices are to be delivered to Mr. MacIntyre, and he is to retain them a sufficient time to have them checked, and if he finds necessary he will put them all in evidence. The exhibit received is Respondents' Exhibit for identification 290-A to Z-1. They are received in evidence as marked and as conditioned.

RESPONDENTS' EXHIBITS NOS. 290-A through 290-Z-1 were offered and received in evidence.

Mr. Austin: May the record note that if Mr. MacIntyre does not see fit to offer them in evidence, he will return them to us.

Trial Examiner Norwood: Yes.

Mr. Austin: If he does see fit to offer them in evidence, we still have the privilege of substituting photostatic copies.

4367 Trial Examiner Norwood: That is agreed to.

Mr. MacIntyre: I do not know whether I should be put to the burden of offering anything from Mr. Austin's invoices, if some of those show his tabulation to be incorrect in any respect. I should object to being put to the burden of offering his invoices to correct his tabulation. He should offer them.

Trial Examiner Norwood: You are to have the privilege of offering them if you want to. That is all there is to that. Proceed.

Mr. Austin: That is all.

Mr. Robison: May I ask the witness some questions?

Trial Examiner Norwood: Yes, go ahead.

By Mr. Robison:

Q. In your experience in that conduit business, have you observed, and do you know whether or not it is a matter of importance to the contractor buying conduit for his job for delivery from the mill in carload lots to receive deliveries at or immediately before the time when he is ready to install the conduit?

A. Yes, sir.

Mr. MacIntyre: Objected to. It calls for hearsay.

Trial Examiner Norwood: Read the question.

(The question referred to was read by the re-
4368 porter.)

Mr. MacIntyre: I object to the question. It assumes that a man is all knowing.

Trial Examiner Norwood: Objection overruled. You can answer.

The Witness: My experience in over 25 years in the conduit business would definitely indicate that it was quite necessary that a contractor have conduit on his job to coincide with the progress of the building.

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By Mr. Robison:

Q. On building construction jobs in general, what is the practice as to scheduling and making deliveries, whether from mill or from a distributor's warehouse, at times to match the requirements of the job for installation of the conduit?

Mr. MacIntyre: The question is objected to and the others along the line, on the ground that it goes to an irrelevant and immaterial matter. There is no connection to show that they have anything to do with the issue raised here.

Trial Examiner Norwood: Read the question.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Objection overruled. You may answer.

4369 The Witness: I do not know that there is any definite practice followed other than to have conduit on the job as the building work of other trades progresses, so that it may be installed as the concrete is poured, and the coincidence of conduit being there at that time is exceedingly important.

By Mr. Robison:

Q. Why is it important? In other words, what are the advantages to the contractor in having deliveries of conduit so scheduled and made?

A. In order to avoid loss of labor time, I would say, would be the principal one, in order that the other trades might not be held up in connection with their work would be exceedingly important.

Q. I understand that answer to have reference to the matter of possible late delivery. That would be the significance of late deliveries, is that what you mean?

A. That would be the significance of late deliveries, yes, sir.

Q. What about the matter at the other end of the scale, or having the deliveries not too long before they are required at the building?

A. That would represent disadvantages in regard to warehousing, perhaps deterioration of the material, being exposed to the elements, damage to it by other trades on the job.

4370 Q. And possible expense of warehousing and rehandling?

A. Possibly, and possible sabotage, loss of material.

Mr. MacIntyre: The testimony of Mr. Robison on this is irrelevant and immaterial matter, in the form of leading questions.

Trial Examiner Norwood: The counsel may object to each question that comes up, if he wants to.

Mr. Robison: I have no more questions to ask this witness at the moment.

Trial Examiner Norwood: You may examine.

Cross-Examination by Mr. MacIntyre.

Q. The E. B. Latham Company has consignment stock contract agreements with a number of manufacturers of conduit, does it, Mr. Latham?

A. Two.

Q. Who are they?

A. General Electric Company and Spang-Chalfant, Inc.

Q. Has it had others during the past five years?

A. Yes, sir.

Q. With whom?

A. National Electrical Products Corporation.

Q. When did you discontinue your consigned stock agreement with National Electric Products Corporation?

A. My best guess would be 1938.

4371 Q. Did you have still others since 1936?

A. No.

Q. So from 1936 to 1938 you had three consigned stock arrangements?

A. That is correct.

Q. You had Central Tube as one preceding Spang, did you?

A. I did. I considered that as one, Mr. MacIntyre.

Q. And you carried simultaneously consigned stocks of those three, from which you made sales and on which you quoted prices?

A. That is correct; yes, sir.

Q. And had written contracts with all three of them, that is, consigned stock contracts, from 1936 to 1938?

A. I recall definitely Central Tube, that is Spang-Chalfant, and National; I can't recall definitely that we had a contract with General Electric.

Q. Do you recall any difference in the consigned con-

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tracts with any of these concerns, that is, any one of them as compared to the others?

A. Only in regard to one matter, on the question of insurance; I believe one carried the insurance and the other didn't.

Q. Which one carried the insurance?

A. I think National Electric Products carried the insurance, and Central Tube did not.

4372 Q. In other words, they compelled you to insure what they considered to be their goods?

A. That is right.

Q. And each of these three with whom you had consigned stock contracts furnished you with their price cards?

A. That is correct.

Q. And just as they issued them?

A. Correct.

Q. And did salesmen of each of the three of them call on you at times?

A. Yes, sir.

Q. And discuss prices with you?

A. I don't recall any specific conversation in that regard.

Q. You do not recall the salesmen of any of these three that you had the consigned stock arrangements with discussing the prices with you?

A. They probably might have, but I don't recall any specific conversation on it.

Q. What did they discuss with you, if they did not discuss prices?

A. Sales principally.

Q. It was not necessary with these cards in your hands to discuss the prices at which you were to buy it, was it?

A. We understood what our cost was.

Q. From the cards?

4373 A. Yes, sir.

Q. Was there ever an occasion on which you submitted any price card of any manufacturer to a manufacturer who did not issue it, for his information?

A. I have no recollection of doing so.

Q. Have you also handled conduit manufactured by these three manufacturers whom you have named and other manufacturers of conduit on any basis other than consigned stock contracts?

A. Yes.

Q. Did you buy the conduit outright?

A. Yes, sir.

Q. And stock it in your warehouse?

A. I don't recall whether it was stock or direct shipment, but I know we have purchased from other than these three.

Q. It is a fact that you have at times submitted bids to public bodies on conduit which you proposed to buy outright and fulfill your contract if you secured it pursuant to the bid, is that correct?

A. That is possibly true.

Q. Is it not a fact, Mr. Latham, that you have done that?

A. Yes, it is.

Q. And it is also a fact that you have billed some orders of your customers from stock owned by you in your warehouse?

A. That is correct.

Q. There have been quite a number of occasions 4374 when you have filled orders of both of those kinds from merchandise bought outright by you, is that correct?

A. That is correct.

Q. That is covering the period of the past five years?

A. Yes, sir.

Q. On direct examination you testified that it had been reported to you that warehouse stocks in Chicago and in Pittsburgh had not been discontinued, and that unfair competition existed there by reason of manufacturers competing in competition with jobbers; do you recall that testimony?

A. No, not exactly as you have stated it.

Q. Do you recall that the reports which you received were to the effect that manufacturers were in competition with jobbers in Pittsburgh and Chicago by reason of them having maintained at sometime warehouses in those districts?

A. Well, now, may I qualify the answer slightly?

Trial Examiner Norwood: Yes.

The Witness: (Continuing.) I testified that manufacturers—it had been reported to me that manufacturers had not discontinued their warehouses in those two centers; in regard to there being any competition with jobbers, it was only through other jobbers that they were in

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competition, and not in direct competition that I referred to; I didn't mean by that that manufacturers were selling direct.

By Mr. MacIntyre:

4375 Q. But they were selling from their warehouses to the account of jobbers?

A. Right.

Q. And delivering it to the jobbers' customers on account of certain jobbers?

A. That is what I had been told.

Q. And it was that sort of a practice that you referred to as bidding in competition with certain other jobbers who stored—who carried warehouse stocks themselves?

A. That is correct.

Q. And it was that sort of a practice that you referred to as unfair competition in your report, is that correct?

A. It would be, yes, sir.

Q. Do you figure bids by your company?

A. No.

Q. Who does?

A. We have a regular estimating department, the names of the people— Do you wish the names of the people, Mr. MacIntyre?

Q. Yes, if you please.

A. Well, we have Mr. Bolin, Mr. Brady.

Mr. Austin: Will you, for the benefit of the Stenographer, give him those names?

The Witness: Mr. S. D. Bolin, Mr. James Brady, Mr. Robert Smythe.

4376 By Mr. MacIntyre:

Q. On direct examination you told Mr. Austin that you used the freight adder—the freight adder books which the manufacturers supplied you, for figuring prices on direct mill shipments made to your customers?

A. That is correct.

Q. I show you Commission's Exhibit 727, which shows that your company submitted bids which were the same as the bids submitted by a number of your competitors.

Can you tell me whether or not it was the practice of your company in submission of bids which were identical with your competitors, to use the freight added books in computing them?

Mr. Stewart: May I ask, Mr. Examiner, does that exhibit show the discounts?

Trial Examiner Norwood: You may ask the witness that.

Mr. Stewart: May I ask, Mr. MacIntyre?

Mr. MacIntyre: Mr. Stewart, you can ask that question on redirect examination.

Mr. Stewart: At the time those exhibits were offered in evidence by your own witness the Examiner ruled that the question of discounts did enter into the question of similarity of bids; and therefore, I object to your stating that the bids are the same.

4377 Mr. MacIntyre: The bid prices are the same, as to whether one salesman gave a calendar or a pencil that this concern did not give to the customer, I object to that.

Mr. Stewart: May I have the question?

Trial Examiner Norwood: Read the question.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Answer the question.

The Witness: Not necessarily the practice of our company to do it; we had no one hundred-percent rule that we followed in that respect. We took competitive situations into consideration in preparing bids, regardless of freight adders.

Trial Examiner Norwood: Did you use the freight adders?

The Witness: We might have in this particular case, but we had no general rule that governed our doing so.

By Mr. MacIntyre:

Q. I show you Commission's Exhibit No. 731, which shows that your company submitted bids to the Board of Supplies and Accounts of the Navy Department, which were higher on several items than the bids that were submitted by your competitors, would you say that this is one of the instances where you did not use the freight adder books in computing those bids?

4378 A. Possibly, possibly we made an error in misjudging the market.

Q. Is there any explanation other than the use of the price cards, and the freight adder books in figuring out bids which your company submits to the Government under seal, as to how you and your competitors could get

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exactly the same prices, such as you and they submitted, as shown by Commission's Exhibit 727?

A. I can't explain the bids of competitors, but I would say that there may be devious ways that they may arrive at the same price, or the approximate price.

Q. How could you arrive at exactly the same prices as you and your competitors arrived at, and which you and they submitted to the Government under seal, except through the use of your freight adder books, and the price cards of the manufacturers?

A. Possibly by figuring a profit on our cost in a round percentage figure.

Q. You explained that as a means of getting at exactly the same prices down to the fourth decimal point in terms of cents per foot, is that correct?

A. It could be that on the basis of five percent, if we were to add five percent to our cost on a transaction, it would easily come out to four places.

Q. You are now talking about taking the cards 4379 of the manufacturers, that is the net price of the manufacturers to you under the price cards, and adding five percent to that net price?

A. That is right.

Q. And you are stating that if it were the practice of you and any other jobbers to do that, that you and they would get the same prices?

A. By taking the freight adder, after adding a certain round percentage to our cost figure, you would get the same price.

Q. And except by handling it by that method you know of no way in which you and your competitors were able to get exactly the same prices on bids to the Government under seal, such as shown by that Commission's Exhibit 727?

A. Unless the card prices were quoted by everyone, I wouldn't know. Maybe this is the card price; I would not know, where these bids are identical—this is the one we are high on—but in such cases they may get several prices the same; it might have been one of the other reasons as to how it might have happened that way.

Q. Do you have any explanation as to how you and your competitors could get exactly the same prices and submit them in their bids under seal, except through the use of those methods of which we have been talking?

Mr. Austin: I have sat here listening to this question asked five different ways, with all sorts of answers
4380 and very reasonable answers. We are going after it again, and I think we have run Robin Hood too far around the barn now. I object to the question. It has been answered at least three times.

Trial Examiner Norwood: Read the question.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Objection overruled. He may explain that to us.

The Witness: I have no further explanation to what I have already stated, Mr. MacIntyre.

By Mr. MacIntyre:

Q. You and your competitors could sit down and agree to submit exactly the same prices down to four decimal points in terms of cents per foot, could you not?

A. We could if we did, but we didn't.

Q. Is there any other explanation, except through the use of the method, that you and they arrived at exactly these same prices?

A. We have a manufacturer's resale card as their agent which could govern our resale price if we desired to let it do so, if it were not a competitive price and we quoted on such an order today the chances are we would not continue getting it indefinitely.

Q. You have quoted those resale prices from your
4381 manufacturer's cards, have you, in your bids under seal to the Federal Government?

A. We have in about—well, you can see the percentage of the goods that are set forth here. We may have done it to some extent, we may have done it in a very small extent, and very probably did.

Q. You are unable to state now, however, whether or not you did so quote prices in the submission of your bids to the Government under seal, as is shown by Commission's Exhibit 727?

The Witness: Will you read that?

Trial Examiner Norwood: Read the question.

(The question referred to was read by the Reporter.)

Mr. MacIntyre: That is whether or not you did quote.

The Witness: No, I am not in a position to say, Mr. MacIntyre, with regard to this specific bid.

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By Mr. MacIntyre:

Q. You do know that you could have arrived at exactly the same prices as your competitors quoted, in your submission of bids in that instance, by the method of quoting resale prices suggested by the manufacturers; is that right?

A. It could be that; I don't know what these prices represent.

4382 Q. You could have gotten the same prices as your competitors in the handling of it that way?

A. It is possible.

Q. You know it could be?

A. Yes, sir.

Q. Is it your testimony, Mr. Latham, that in none of these bids in this big pile of bids that are on the table that the Government asked for prices F.O.B. factory?

A. I rather doubt that they asked for it F.O.B. factory.

Q. Do you have any recollection of whether or not the Government asked for bids F.O.B. factory?

A. I don't know that as to these bids, but I do know that they have asked for bids F.O.B. factory. The Air Corps asked for bids F.O.B. factory.

Q. Did you ever see any of these price cards of these manufacturers with whom you have consigned stock agreements, or any from whom you bought conduit which provided for the quotations of prices F.O.B. factory?

A. No, I don't recall that I have.

Q. How long have you been handling conduit?

A. About 25 years. I beg your pardon. You are asking whether there is an F.O.B. factory price on conduit?

Q. I am asking you whether you ever saw any of the price cards of the manufacturers which provided for an F.O.B. mill quotation?

4383 A. They are priced F.O.B. mill.

Q. But involving the use of the so-called freight adder in getting at the so-called delivered cost?

A. Yes, sir.

Q. That is on the Pittsburgh base?

A. Yes, sir.

Q. Irrespective of where it is shipped from?

A. That is right.

Q. Did you ever see any price cards of any manufacturer during the entire period of your experience in

the conduit industry which provided for prices to be quoted on any other basis?

A. No, I cannot recall that I have.

Q. Referring to Respondents' Exhibit No. 290, can you tell me what part of the sales which are listed in this second column as being sales off card were made by you within fifteen days after a change in the price took place under card 76?

A. No, not without referring to the—

Mr. Austin: If Your Honor please, I would like to call the attention of Mr. MacIntyre, if I may, that every one of the sales shown is dated, so that what you are asking is part of the exhibit.

Trial Examiner Norwood: What is the percentage of the off card sales to your total sales, which include
4384 the on card sales and include the contract sales?

The Witness: The on card sales indicate 3.92 percent, and the contract sales—

Trial Examiner Norwood: That is 3.92 percent of total sales—

The Witness: Yes.

Trial Examiner Norwood: That disregards your contract sales?

The Witness: Yes, sir.

Trial Examiner Norwood: Now, include your contract sales, please.

The Witness: 16.95.

By Mr. MacIntyre:

Q. These dates that are shown in the left margin column of Respondents' Exhibit 290-B to Z-1, inclusive, are the dates on which you made deliveries and billed the goods to your customers, is that correct?

A. These are invoice dates and are coincident with our shipping dates.

Q. Shipping dates?

A. That is correct.

Q. And of course you took orders then on the so-called open orders on dates prior to those, did you not?

A. Do you mean future delivery orders, without contracts?

Q. Yes.

4385 A. Possibly.

Q. And it is part of your regular business to do that, is it not?

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A. It is part of our regular business to take orders from contractors and industrialists to ship at a specific—on a specific date, and not as an indefinite thing, it is timed within a specific period.

Q. Did you take orders from them ante-dating—that is, for specific shipments of say five hundred feet or two thousand feet of conduit, and for delivery to them of that conduit, two weeks, four weeks and five weeks—

A. Yes.

Q. —and sometimes as much as two months after the date on which you sold it to them?

A. That is right.

Q. And this exhibit 290, that is Respondents' Exhibit 290-B to Z-1, inclusive, does not show any of the dates on which the sales were made, but the dates on which the shipments were made, that is, deliveries by you; is that correct?

A. Those are invoice dates and shipping dates.

Q. But not necessarily in any case the date on which the sale was made?

A. Not necessarily the date the order was taken; it might have been a day later, it might have been two weeks, but in the majority of these cases the shipment im-
4386 mediately follows the placing of the order. I think you will find that.

Trial Examiner Norwood: Is there sufficient data in those invoices which you furnished to determine whether or not the contracts were sold on the card at the time they were made?

The Witness: I would say that the card price in effect did not apply to any of the shipments that were taken on contracts.

Trial Examiner Norwood: And is there any data there to show whether or not the price in the contract was the card price at the time it was made?

The Witness: I have no information on that here.

Mr. Austin: That is why we segregated that group because we could not show it.

The Witness: It might have been taken at previous cards.

By Mr. MacIntyre:

Q. Looking to these invoices upon which this Respondents' Exhibit 290 is based that date appearing thereon, I believe you have already testified, is your shipping date?

A. (Examining papers.) This is the shipping date here, Mr. MacIntyre (indicating). This is the date of the order (indicating). This is the date of shipping (indicating). (Reading.) "Delivery 4/13."

Q. On the first invoice in this group, in the one
4387 with the Arc Electric Company, what do you show on the invoice, the date of the order and the date of the shipment?

A. Well, we do in all cases. That is the date the order was taken, April 12, 1937, and delivered the 13th; April 19, deliver April 19. I think you will find that is general.

Q. That could be determined from a study of your invoices?

A. Yes. April 30, delivered May 3rd.

Q. Five days?

A. Five days; May 7th, May 7th; May 21st, May 24th; June 11th, June 14th; June 17th, June 18th.

Q. No invoices are in this group covering written contracts, though, that were entered into for specific jobs?

A. Yes, those that are referred to as in this 13 percent of sales are in there.

Q. They would be in the third column in Respondents' Exhibit 290-A?

A. That is right.

Mr. Stewart: I should like to ask one question.

Trial Examiner Norwood: Yes.

By Mr. Stewart:

Q. As to the various methods by which you and
4388 your competitors might file identical bids on public bids, I would like to ask you what is to prevent you from taking the bid on a late bid, to give an instance, and the next time there is a bid, taking that bid and taking a discount off and bidding that amount?

A. That has been done, and we do it constantly.

Q. That is a method by which you arrive at bids?

A. That is usually an established method.

Q. That is another method by which you might arrive at identical prices, is it not?

A. Yes, sir.

By Mr. MacIntyre:

Q. How do you know, Mr. Latham, that you and your competitors are going to take exactly the same discount from the cards when you submit your bids under seal?

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A. I do not think it is possible for me to interpret the thinking of my competitors. I have used my own judgment in those matters, and I try to hit it on the head so I will get the order.

Q. How, then, is it possible for you and your competitors to make exactly the same deductions by way of discounts from the card?

A. Well, by adding, as I have explained—we can take our bare cost and add a round profit figure of four, five, six, seven, eight percent, and add the necessary
4389 freight adder to that particular destination, and you are bound to come out the same.

Q. That is what the manufacturers' cards instruct you to do in arriving at delivered cost, that is, to take their basing point price as the net price to you, apply the freight adders and place five percent as a base on direct shipments, is that correct, or six percent?

A. I think that is six percent on carload lots, but it may be less than a carload, Mr. MacIntyre, involved in that particular transaction we are talking about. We may sell a thousand feet on a five-percent basis.

Q. You maintain that the manufacturers' cards specify particular discounts that are applicable on less-than-carload shipments?

A. We make very few less-than-carload direct factory shipment. I can't recall.

Q. You recall that the manufacturers' cards provide for particular discounts in the case of less-than-carload shipments?

A. O, yes, sir.

Mr. Austin: May I ask whether or not Mr. MacIntyre's cross-examination is finished except for these bids?

Mr. MacIntyre: I would not want to commit myself to that.

Mr. Austin: After all, I want to be co-operative,
4390 Mr. MacIntyre.

Did you finish your cross-examination except for those bids?

Mr. MacIntyre: I do not believe that I will have any other cross-examination, except on the bids, and possibly on the reports.

Mr. Austin: We have the reports here to go to work on them.

Mr. MacIntyre: I will go to work on this with the bids tonight.

Trial Examiner Norwood: We never put up barriers to receiving really desirable information on these subjects.

Mr. Austin: You never can tell.

Mr. MacIntyre: Except as to the matters in this, and the matters in the bids, I would say that I am through.

Mr. Stewart: I should like the record to show that when the next adjournment is had that it be at least for two weeks, for the reason that a member of my family is going to the hospital next Monday for an operation, and I think that it will take two weeks to conclude that situation.

I should also like the record to show that as far as I am concerned that except for some bids which in all
4391 probability will be necessary to supply on behalf of my respondents, that I expect when that feature of the case is taken care of that Mr. MacIntyre will then close his case, and we will then go ahead with our expert testimony. In other words, I want to make it plain, if the question arises, as far as I am concerned, I object and oppose our going ahead with our expert testimony until Mr. MacIntyre closes his case in chief.

Trial Examiner Norwood: Mr. MacIntyre, did you want to make a statement about that, or do you wish to defer it until later in the week?

Mr. MacIntyre: Well, if further proceedings in this case beyond Friday of this week is to be made contingent upon anything that I do, then I ask that I be permitted to do whatever is required in that direction not later than one week from next Monday, because I will be prepared at that time to do it.

Trial Examiner Norwood: One week from next Monday? I will discuss this further with the counsel.

Mr. MacIntyre: And I do not think that it should be required because no testimony that respondents can offer should be contingent upon anything that I do from here on, because while I have asked for permission and the Commission has granted me permission to put in certain invoices in this case subsequent to the date on which
4392 I did rest, namely, October 1, 1941, I feel that the invoices that I am now selecting to be offered by me are just as well acceptable in this case and should be as rebuttal material as any part of the direct case, because it meets material which respondents have put in in their defense.

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Trial Examiner Norwood: Counsel may elect to do that if he wishes to, if he feels that it is rebuttal.

Mr. Stewart: If he wants to make it rebuttal, it is all right with us.

Trial Examiner Norwood: Counsel may discuss this further, and we will decide it by Friday.

We will recess until 9:30 tomorrow morning.

(Whereupon, at 4:00 p. m., Tuesday, January 13, 1942, the hearing in the above-entitled matter was adjourned.)

4395 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment, the hearing in Docket No. 4452 is now reconvened in the Conference Rooms, 28th floor, 15 Broad Street, New York, New York, at the offices of Cravath, deGersdorff, Swaine & Wood, on January 14, 1942, at 9:30 a.m., eastern standard time.

You may proceed.

Mr. MacIntyre: Mr. Latham, will you please resume the stand?

Trial Examiner Norwood: Mr. Leslie E. Latham will resume the stand for further cross-examination.

LESLIE E. LATHAM thereupon resumed the witness stand and testified further as follows:

Cross-Examination (Continued) by Mr. MacIntyre.

Q. Mr. Latham, did you testify on direct examination concerning reports that you made as chairman of the conduit committee of the National Electrical Wholesalers Association?

A. I did.

Q. And you attempted to set forth there in those reports accurately what took place at your meetings
4396 held by the committee, did you?

A. I did.

Q. Now, I call your attention to the last paragraph in the first page of Commission's Exhibit No. 39-E, your report as chairman of the conduit committee of its meeting

of October 18, 1938, in which you make reference to a practice which had been established concerning the two step schedule, differentiations of 15 percent and 20 percent minimum as the margin required by wholesalers to meet the cost of doing business in connection with the sale of conduit (handing paper to witness).

A. Yes.

Q. You were talking about margin there, were you, between the net prices that you and the other wholesalers were paying to conduit manufacturers and the mark-up represented by the suggested resale prices at which the manufacturers suggested that you resell the product for, is that correct?

A. We were talking about a margin of profit on the selling price, 15 percent or 20 percent, based on the quantities and the selling price.

Q. But that margin is the difference between the net price that you paid to the manufacturers and the price which you charged your customers; is that correct?

A. On the selling price?

Q. Yes.

4397 A. Yes.

Q. You didn't mean by anything that you said in that paragraph here which I just called to your attention that all wholesalers and jobbers of conduit had a cost of exactly the same amount of 15 percent on a particular quantity, and of 20 percent on a particular quantity as cost in the handling of conduit, did you?

A. I intended to infer by that recommendation that wholesalers required a minimum differentiation between cost and selling price of these percentages in order to handle conduit based on our cost study.

Q. But you didn't mean by that that all wholesalers had exactly the same cost, did you?

A. Oh, not at all.

Q. Or that any substantial number of them had a cost of 15 percent in handling a particular quantity, or 20 percent in handling a particular quantity of conduit, did you?

A. Based on our cost study we arrived at an average cost—

Trial Examiner Norwood: Wait a moment, please.

Just answer his question, please.

Read the question, Mr. Reporter.

(The question referred to was read by the Reporter.)

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The Witness: The cost of handling a smaller quantity is greater than it is of a larger quantity in one order
4398 and one delivery, and therefore there should be a differentiation in the price of handling a small order than a large order.

Now, maybe that doesn't answer your question.

By Mr. MacIntyre:

Q. Well, I will ask it again.

You didn't mean by that statement that is included in that paragraph that any particular number of wholesalers and jobbers of conduit had a cost of 15 percent in the handling of a particular quantity of conduit, and a cost of 20 percent in handling another particular quantity of conduit, did you?

A. Well, based on our cost study that fact was revealed on the average.

Trial Examiner Norwood: Was that the actual cost to any particular dealer, any particular seller?

The Witness: It could have been.

Trial Examiner Norwood: Well, was it?

The Witness: I couldn't say.

By Mr. MacIntyre:

Q. All of that set forth in that paragraph concerning that figure is based upon all of the items of average cost and considerations concerning average costs which have been put into evidence here as Respondents' Exhibits 272 and 275? That is, the cost schedules of the operating cost committee of the National Electrical Wholesalers
4399 Association, is that true?

A. That is true.

Mr. MacIntyre: I would like to have this marked.

Trial Examiner Norwood: It will be marked for identification as Commission's Exhibits 739-A to 739-G.

(The documents referred to were marked "Commission's Exhibits 739-A, 739-B, 739-C, 739-D, 739-E, 739-F, 739-G" for identification.)

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Mr. Latham, I show you Commission's Exhibit 739-A to 739-G for identification, and I will ask you to state what each portion of that exhibit is, giving the page references by the exhibit numbers.

(Handing papers to witness.)

A. The first is a copy of Navy Schedule No. 3559, inquiring for prices on a quantity of rigid conduit.

Q. That covers Commission's Exhibit 739-A to D, inclusive, for identification, is that correct?

A. That is correct.

Q. What is Commission's Exhibit 739-E for identification?

A. A letter from the conduit products section of the General Electric Company.

Q. To your company?

A. To our company.

4400 Q. Relating to that proposal?

A. Relating to this proposal.

Q. And what is Commission's Exhibit No. 739-F for identification?

A. Another letter pertaining to the same matter.

Q. From the same company to your company?

A. Yes, from the same company to our company.

Q. And what is Commission's Exhibit No. 739-G for identification?

A. It is a correction of the Navy Department schedule changing quantities.

Q. That is, increasing the amount of quantities the Navy desired under that proposal, which is evidenced by Commission's Exhibit No. 739-A to D for identification; is that right?

A. That is right.

Q. And Commission's Exhibit No. 739-A to D includes not only the proposal but a copy of your bid which you submitted; is that correct?

A. That is correct.

Q. And that is filled out in pencil there, isn't it?

A. Yes, that is right.

Q. Now, over the period of years since you have had relationships with the General Electric Company, with the Central Tube Company, and with Spang-Chalfant

4401 and the National Electric Products Corporation you have received letters from them concerning bids which you submitted to the Federal Government under seal similar to these letters marked for identification as Commission's Exhibit No. 739-E and 739-F, is that correct?

A. Acting as their agent, it would be likely that we would write in regard to large quantity orders of this

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kind for any special price they may have wished to give us to quote.

Q. Well, do you know as a matter of fact that that has occurred over the years in a good number of instances?

A. Oh, yes, but I wouldn't say a great number.

Q. Well, in a considerable number of instances with each of those companies?

A. No; I wouldn't say that, Mr. MacIntyre.

Q. Well, in how many would you say that it has occurred?

A. Oh, perhaps not to exceed two or three dozen times, at the most.

Q. And those are the important bids, you would say?

A. Well, if the market were as bad as it has always been we would like to have this business, naturally; and if there were any special considerations in view of the large quantities involved, acting as their agent, we would naturally want to find out whether they could give us a special price to quote; that is, beyond our normal cost.

Q. Well, these prices which you have quoted in
4402 this bid, Commission's Exhibit No. 739-A to D, inclusive, for identification, included a jobber compensation that was provided for in your consigned stock or agency sales agreements with the General Electric Company, didn't it?

A. I haven't examined it to that extent.

Q. Well, will you please examine all that it is necessary for you to examine in order to answer that question?

A. There is nothing said herein that bears out that fact.

Q. Well, when you submitted prices in your bids, you took care of all of your compensation in that, didn't you?

A. We would assume that there was a margin of profit in these prices for us.

Q. If it is found that those prices which you quoted there reflected the prices in the price cards of the General Electric Company which provided for jobber compensation, you would say then that your compensation was taken care of in those bids; is that correct?

A. If we had compared these prices with our cost from the General Electric Company under normal conditions, under normal orders, and they were the same, we would know about it.

Q. But if they are the card prices, and if they are found

to be the card prices, then your compensation is taken care of, is that correct?

A. That is correct.

4403 Mr. MacIntyre: Now, I offer these documents into evidence.

Mr. Austin: May I see them, please?

Mr. MacIntyre: Yes.

(Handing papers to Mr. Austin.)

4404 COMMISSION'S EXHIBITS NOS. 739-A to 739-G were offered and received in evidence.

Trial Examiner Norwood: Let the record show that

4405 through a mistake the document marked Respondents' Exhibit No. 284 was reported as being received in evidence.

This is an error as Respondents' Exhibit No. 284 was not received in evidence, but is marked for identification, and is in possession of some of the counsel here.

You may now proceed, Mr. MacIntyre.

By Mr. MacIntyre:

Q. Now, Mr. Latham, I am showing you some documents which I found in these papers that Mr. Austin placed on the table in front of you yesterday for my use in my cross-examination of you, which purports to be a report of yours of bids which were opened pursuant to Invitation No. 328091 by the United States Treasury State Procurement Office, 76 Ninth Avenue, New York, New York, March 18, 1940, for quantities of conduit.

A. Yes.

Q. Now, I am going to ask you to please tell us as you examine that report, what the bids were for each of the companies at that letting, giving for each company its full name as it is generally known, and the price in terms of—that is, the unit price for each size of conduit involved, and the discount terms for each company.

A. The first bidder is the Westinghouse Electric Supply Company, and the first item is 1½ inch conduit—

Q. Will you give the type of conduit, please, whether it is galvanized conduit?

4406 A. Galvanized, and the price is $14.90 for one hundred feet.

Q. Yes.

A. (Continuing.) The next bidder is the Midway Electric Supply Company, the same item, 1½ inch conduit, price $15.19 for one hundred feet.

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Q. Yes.

A. And the next item is the Graybar Electric Company, the same item, $14.40 for one hundred feet.

Q. Yes.

A. And the next item is the General Electric Supply Company, $14.90 for one hundred feet.

Q. Yes.

A. And E. B. Latham & Company, $14.90 for one hundred feet.

Q. Yes.

A. And Baitinger, $14.90 for one hundred feet.

Q. Is that the full name of Baitinger?

A. The Baitinger Electric Company.

Q. Yes.

A. And Crannell, Nugent & Kranzer, $14.90 for one hundred feet.

Do you want each of these read all the way down?

Q. Yes, each of them.

Mr. Austin: Just a minute, please.

Are those items conduit?

4407 The Witness: All conduit.

Mr. Austin: The whole item all the way through?

The Witness: Yes.

Mr. Austin: All right.

The Witness: No, they are not; I beg your pardon.

By Mr. MacIntyre:

Q. Well, only the conduit items.

Mr. Austin: Well, we do not want to read any prices on anything except conduit.

By Mr. MacIntyre:

Q. Just conduit, and give the type of conduit involved each time, and the size.

Mr. Gilpatric: Mr. Examiner, I object to this.

Why cannot we have the document marked and offered instead of taking up time and having all this reading done?

Mr. MacIntyre: Well, the names of these companies are not spelled out in full.

They are in pencil, and it would be very difficult for anyone other than Mr. Latham to determine who they are.

Trial Examiner Norwood: Well, he may give us these names, and then if counsel wants to put the paper in, he may offer it.

Mr. Gilpatric: I ask that it be marked.

Trial Examiner Norwood: Yes, mark it, Mr. Reporter.

The Witness: Now, may I just interpret this bid 4408 slightly beyond this? In other words,—

Trial Examiner Norwood: Let the paper be marked first, please.

The Witness: These are not the correct bid prices.

Trial Examiner Norwood: Please mark it Commission's Exhibit No. 740-A to E for identification.

(The documents referred to were marked "Commission's Exhibits Nos. 740-A, 740-B, 740-C, 740-D, and 740-E" for identification.)

Mr. Gilpatric: I believe that Mr. Latham was making some explanation there.

By Mr. MacIntyre:

Q. Mr. Latham, I believe you have already given us the names of each of these persons or firms, is that correct?

A. Yes, sir.

Q. And these figures for each of the items below are in terms of dollars and cents per one hundred feet, is that correct?

A. They represent list prices, and not net prices. That is the point.

Q. But they are the bid prices?

A. No; they are not the bid prices.

Q. What are the bid prices?

A. In the case of E. B. Latham & Company, who are the only ones that I can answer for, you will notice 4409 in the original bid, or filed copy, that we have deducted from those list prices a discount of 1 and 5 percent, plus 5 percent, which represents our cost; in this case less 1 percent, plus 5 percent.

Now, these prices that I have read are list prices in our case, and I presume they must be in the others based upon the total lump sum bid of each individual bidder.

Q. Well, in your list of discounts at the bottom of that tabulation you show a discount for each, don't you?

A. That is a cash discount.

Q. Well, why didn't you in making up that tabulation show in that whether or not other discounts were offered?

A. Because we were bidding for the entire order, and not part of it.

Q. You can't determine from anything contained there-

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in whether or not others did offer discounts from list prices beyond the cash discount, can you?

A. Yes, I can.

Q. How can you?

A. By taking the total of these unit prices and figuring what the actual total would be, based on these prices, and then comparing it with your total lump sum bid, and if there is a difference, the percentage would be the difference.

Q. Can you do that from the information you have there?

A. I can't do it here, because I don't have the exact total of these individual unit prices, but if I did have it you will note that while the unit prices shown are the same, the total prices are all different, ranging from $5083.05 to $6319.00.

4410

Q. Well, can you determine from anything that is contained in those papers whether or not discounts were given?

A. Well, if the unit prices are all identical and the total prices are all different, then there were different discounts given.

Q. Can you determine whether or not a discount was given on any particular item, and how much, from any information which you have there?

Mr. Austin: Wait a moment, sir.

Do you mean with respect to what?

His bids or his competitors' bids?

Mr. MacIntyre: His tabulation here; his competitors' bids.

Mr. Austin: Well, he has already stated that he knows what his discounts were.

By Mr. MacIntyre:

Q. I am talking about these bids that you have tabulated, Mr. Latham?

A. Well, it would be easy enough to determine if we had the correct total of the unit prices bid, and compare that with the lump sum bid.

4411

Q. On any item?

A. I can't do that mentally, but it can very easily be figured.

Q. I know, but can you do that as to any one of those items that these companies bid on there?

A. It very definitely occurred in the conduit, because the differences are the differences in prices, in my price, and I presume it is so in the others, which is greater than all of the value of the other material unit prices.

Q. Well, will you please let us know whether or not on any one item, say the 1½ inch galvanized conduit, the Westinghouse Electric Supply Company gave any discount beyond the cash discount? Do you have anything there to show whether or not they did on that item?

A. I would say that they did.

It is merely my opinion, because the total compared with our total would indicate that there was a discount given.

Q. But you have no definite information upon which you are basing that opinion other than a surmise from the entire final result, is that correct?

A. Other than the fact that I can't calculate this mentally.

Q. Well, can it be determined by arithmetic?

A. Yes.

Q. Whether or not on 1½ inch galvanized conduit
4412 the Westinghouse Electric & Supply Company on that bid gave any discount beyond its 5 percent discount for cash?

A. On that one specific item?

Q. Yes.

A. I would say no, but the group of conduit items, yes.

Q. You have to group them all before you could tell whether or not a discount was given?

A. That is right.

Q. And that was true of all of these papers that you brought in here yesterday on which you had reports in the form of tabulations of bids submitted by your competitors to the Procurement Division of the Treasury Department, isn't that correct?

A. I don't think so.

I think where the items were all conduit, the probability is in many caces that the unit prices shown are the total prices.

Q. There were a few instances in these bids that you had here yesterday that all items in a particular letting were conduit, isn't that correct?

A. That is right.

Q. So except in those few instances, it would be impossible to tell whether or not on a particular item any

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discount below the list price or the bid price was given by any particular bidder, isn't that correct?

4413 A. If the unit prices totalled the same as the total prices, yes.

Q. But in those instances where you have items other than conduit involved, and where the unit prices do not total the same total, and the unit price is not the same as the total price, you still couldn't tell whether or not any discount from the bid price had been given on any conduit item, could you?

A. No.

Mr. MacIntyre: That is all I have.

Trial Examiner Norwood: Redirect examination.

Mr. Austin: First of all, I would like to offer this in evidence. (Indicating.)

Trial Examiner Norwood: Is there any objection?

4415 Let the record show, then, that Commission's Exhibit numbers for identification 740-A to 740-E is received in evidence as Respondents' Exhibits 291-A to 291-E, and the papers will be so marked.

COMMISSION'S EXHIBITS 291-A to 291-E were offered and received in evidence.

Trial Examiner Norwood: You may proceed.

Mr. Austin: I have just one more question, Mr. Examiner.

Trial Examiner Norwood: Yes. Proceed.

By Mr. Austin:

Q. Mr. Latham, on cross-examination Mr. MacIntyre asked you questions about the last paragraph of Commission's Exhibit 39-E, the first page (handing paper to witness).

4416 A. Yes.

Q. With particular respect to the recommended margins of 15 percent and 20 percent.

A. Yes.

Q. Now, I would like to ask you whether when you wrote that report it was your belief as chairman of the committee, based on your operating cost surveys, that large numbers of wholesalers did have actual costs approximating 15 percent or 20 percent on the quantities involved?

A. Yes.

Mr. Austin: That is all.

Trial Examiner Norwood: Are there any further questions?

Mr. MacIntyre: No, sir.

Mr. Gilpatric: Just a moment, please, Mr. Examiner.

Trial Examiner Norwood: Yes, very well.

(Pause.)

Mr. Gilpatric: No questions.

Mr. MacIntyre: Oh, I have a question or two, Your Honor.

Trial Examiner Norwood: Very well.

You may proceed.

Cross-Examination by Mr. MacIntyre.

4417 Q. Now, Mr. Latham, referring to this Commission's Exhibit 739-A to 739-G, inclusive, you can determine from that exhibit when you consider all of the pages of it together exactly what discounts, if any, from the bid prices which were allowed or proposed to be allowed by the E. B. Latham & Company in its bid to the Government in that instance, can't you?

A. Yes.

Q. Now, Mr. Austin, on redirect examination, showed you Commission's Exhibit No. 39-E, and you told him that it was your belief on the basis of cost studies which you had made that a number of wholesalers and jobbers of electrical supplies had actual costs approximating 15 percent and 20 percent?

A. Yes.

Q. What did you mean by the term "approximating actual costs" as you used it there?

A. There are many factors that determine a particular wholesaler's cost of doing business, and it is reasonable that each one is not uniform.

Therefore, you have to approximate and strike within a reasonable percentage an average of what the industry's cost is in handling a commodity.

Q. And the costs which you have talked about in the paragraph referred to in that exhibit included everything between the purchase price that the wholesaler paid for

4418 the conduit and the sales price which he got for the conduit in his sales to his customers?

A. The laid-down price to us in New York, and our selling price.

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Q. Your gross selling price?
A. Gross selling price.
Q. And that included the profits, if any, to you?
A. Profits, if any, to us.
Q. And you meant to include that element as falling within this wholesaler's cost which you have referred to in the 15 percent to 20 percent margin, or 15 and 20 percent margins, I should say, is that correct?
A. I haven't read this for a long time, so I would like to do so here.
I would like to review it here.
Q. Yes, do so.
A. Yes.
The sense of this is that those percentages included our margin of profit.
Q. Sales cost?
A. Sales cost; yes.
To meet the cost, as it says here, "as the margin required by wholesalers to meet the cost of doing business in connection with the commodity be observed."
Q. But it was intended that those margins include cost and profit?
4419 A. That is right.
Mr. MacIntyre: That is all.
Mr. Austin: That is all.
Trial Examiner Norwood: The witness is discharged.
(Witness excused.)
Trial Examiner Norwood: We will now take a short recess.
(Whereupon a short recess was taken.)
Trial Examiner Norwood: You may proceed.
Mr. Austin: Mr. Smith, will you take the stand, sir?

HOYT O. SMITH was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Austin.

Q. Mr. Smith, your full name is in the record?
A. Yes.
Q. Will you give us your present position, please?
A. I am manager of the electrical department of the Hardware & Supply Company.

Q. And where is the Hardware & Supply Company located?

A. At Akron, Ohio.

Q. How long have you been employed by the
4420 Hardware & Supply Company?

A. For thirty years.

Q. Can you briefly give us your experience with that company with respect to its sales of rigid steel conduit?

A. In going back when I first went with the company the requirements of rigid conduit were very slight, and they built up during the last War to be of considerable consequence, and have continued to do so.

Q. Now, has your personal experience during the term of your employment with that company in respect to its distribution of rigid steel conduit been fairly constant over the years?

A. It has.

Q. Will you describe briefly the business of the Hardware & Supply Company?

A. Our business is departmentalized in mill supplies, which includes factory supplies of various kinds, heating, electrical, automotive and builders hardware.

Q. And you have stated that you are the head of the electrical division of the company, is that correct?

A. That is correct.

Q. What positions have you held, Mr. Smith, in N. E. W. A.?

A. I have been on the Executive Committee and chairman of some of the commodity committees.

Q. You state that you have been a member of the
4421 Executive Committee of the Association, is that correct?

A. That is correct.

Q. Can you indicate the period of time you served as a member of the Executive Committee?

A. If my memory serves me correctly, it is from 1934 to 1937.

Q. And have you served as a member of the conduit committee of N. E. W. A. for the period January 1st, 1936 to July 1st, 1938?

A. I have.

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4441 *Cross-Examination by Mr. MacIntyre.*

Q. Mr. Smith, I show you Commission's Exhibit 39-D, the report of the conduit committee meeting of the National Electrical Wholesalers Association, May 23, 1938, which was shown to you by Mr. Austin. Will you
4442 please state whether or not you were present every minute of the meeting of the conduit committee on that occasion?

A. I would say yes, but every minute, I cannot split the minutes.

4444 By Mr. MacIntyre:

Q. It is your testimony that you heard what each of the committee members said to the representatives of the manufacturers as they were leaving the hotel rooms, and on the elevators, and in the lobbies during the day?

A. I could not answer that.

Q. You do not know, then, what representations that they made to them during the course of the day as they saw them in the lobby of the hotel and discussed this meeting with the conduit committee?

A. No, sir.

Q. Do you know anything about the discussions which the members of the conduit committee had with representatives of manufacturers in joint meetings on other occasions when you were not present at the meeting?

4445 A. I do not.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

By Mr. MacIntyre:

Q. On direct examination, Mr. Smith, you stated that one of the reasons for your attitude concerning warehouse stocks such as you stated to Mr. Austin, was that the manufacturers were able to use the warehouse stocks to sell at prices out of reason, in competition with you, is that correct?

Mr. Austin: If Your Honor please, before he answers that question, I object to the question on the ground that it assumes a state of facts not shown in the record.

Mr. MacIntyre: I am asking the witness if that is a direct statement of the testimony.

Trial Examiner Norwood: Objection overruled.
Do you say that?
The Witness: Repeat the question.
Trial Examiner Norwood: Read the question, Mr. Reporter.
(The question referred to was read by the Reporter.)
The Witness: It is not. Distributors, instead of manufacturers; it was my intention to make the statement
4446 that distributors used the manufacturers' warehouse stocks.

By Mr. MacIntyre:

Q. To sell conduit at prices out of reason and in competition with you, is that correct?
A. Yes, sir, due to their having no capital investment.

By Mr. MacIntyre:

Q. Did you mean, when you used this term or phrase "prices out of reason," that these other wholesalers that were in competition were going around and selling at prices below your prices?
A. Below our cost of operation, that is correct.
Mr. MacIntyre: That is all.
Trial Examiner Norwood: Have you any redirect examination?
Mr. Austin: No redirect examination, sir.
Trial Examiner Norwood: Thank you, Mr. Smith.
(Witness excused.)

4447 FRED R. EISEMAN was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Austin.

Q. Mr. Eiseman, will you give us your present position?
A. I am secretary and treasurer of the Revere Electric Supply Company, 757-759 West Jackson Boulevard, Chicago, Illinois.
That name, incidentally, was changed from Revere Electric Company in January, 1940, to Revere Electric Supply Company; just as a matter of record.
Q. How long have you been associated with Revere?

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A. Since its inception. My partner and I started the company in November, 1919.

Q. How long have you represented Revere Electric Supply Company in the N. E. W. A.?

A. My company became a member of N. E. W. A. in 1932. I was a member of the Executive committee from 1933 to 1937. I was chairman of the N. E. W. A. from 1934 to 1936.

Q. Have you been Revere's representative in N. E. W. A. since it became a member?

A. At all times.

Q. Have you in your job with Revere Electrical Supply Company dealt with the purchase and sale and dis-
4448 tribution of rigid steel conduit?

A. Yes, sir.

Q. Has your experience with the purchase, sale and distribution of rigid steel conduit been fairly constant over the period of years you have been with the company?

A. Very much so.

Q. Have you been a member of N. E. W. A.'s conduit committee?

A. I was a member of N. E. W. A.'s conduit committee from July, 1938, to July, 1940, as a member.

Trial Examiner Norwood: That committee was composed of some dealers and some manufacturers, was it?

The Witness: When you use the term "dealers", what do you mean by that?

Trial Examiner Norwood: Some wholesalers and some manufacturers.

The Witness: Yes, sir,—not the N.E.W.A. committee, it was all wholesalers only.

4453 Q. Have you purchased conduit outright for your own account fairly consistently over a period of years?

A. Not fairly consistently, but when we started in business in 1919, for the first three years that we were in business we bought all of our conduit outright. After that we went on a consigned basis with the National Electric
4454 Products Company and the Central Tube Company for a period of about ten years, and after that we took on a third line, the Fretz-Moon Conduit Company; but during that period of time we bought conduit outright from the Clayton-Mark Company of Evanston, Illinois.

May I state further that during that period we on some

occasions purchased conduit outright from our regular suppliers.

Q. When you purchased conduit outright from your regular suppliers, how did you buy it?

A. Sometimes we placed a regular order for it and had it come in in a carload shipment, and sometimes we bought outright consigned stock when we made our monthly report.

Q. Mr. Eiseman, did you attend a meeting of conduit manufacturers and electrical wholesalers at the Biltmore Hotel on January 6, 1937?

A. I did.

Q. Who invited you to attend that meeting?

A. Mr. I. A. Bennett, of the National Electric Products Company.

Q. Can you tell us in what capacity he invited you to attend the meeting?

Mr. MacIntyre: I object.

It is not competent for this witness to attempt to say in what capacity Mr. Bennett was acting.

Trial Examiner Norwood: I think it would be bet-
4455 ter for him to give us the terms of this invitation, to tell us what was said about it; that would indicate his capacity.

The Witness: Shall I answer?

Mr. Austin: You can answer, but the Examiner has not ruled as to that.

Trial Examiner Norwood: I will sustain the objection. I think counsel should frame it more satisfactorily.

By Mr. Austin:

Q. Were you a member of the conduit committee of N. E. W. A. at the time you received the invitation from Mr. Bennett?

A. No, sir.

Q. Do you remember whether you received that invitation by letter or by personal conversation?

A. I don't recall.

Trial Examiner Norwood: What were the objects stated?

The Witness: Well, I have always been a very close personal friend of Mr. Bennett's for a period of thirty-five years, and also one of his very good customers in the middle West, and a large distributor of their products, not only conduit, but other products.

Trial Examiner Norwood: But did he say why they

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were meeting, or why you were invited, or anything like that?

4456 The Witness: No, I don't know, except to request that I be present, if possible.

By Mr. Austin:

Q. Mr. Eiseman, can you remember whether there was any discussion at the meeting at the Biltmore Hotel, of quantity brackets, and possible gross margins for wholesalers in connection therewith, in so far as the distribution of conduit was concerned?

A. There was.

Q. Can you tell us whether or not the opinions expressed by the wholesalers present at that meeting differed one from the other?

A. Yes, sir.

4461 Trial Examiner Norwood: Cross-examine.

Cross-Examination by Mr. McIntyre.

4463 Trial Examiner Norwood: Will you tell us with respect to what subjects there was disagreement?

The Witness: Well, Mr. Drury presented the cost study that was prepared by—now, I might make that clear, that I told Mr. Carmichael that it was prepared by three wholesalers, and not three manufacturers—General Electric Supply, I mentioned the names of Westinghouse Electric Supply, and Graybar Electric Company.

By Mr. MacIntyre:

Q. That is what you told Mr. Carmichael?

A. Yes, not three manufacturers; and that Mr. Drury presented that study at the meeting, and then discus-

4464 sion took place as to whether or not the margins of profit referred to in that report were satisfactory, or in a manner suitable for the distribution of conduit probably throughout the country.

Q. It is your testimony here that you did not find all of them at that meeting expressing the same opinion to the effect that the margin of profit proposed was sufficiently great?

A. Great?

Q. Yes.

A. I did not say that.

Q. Some wanted a greater amount of profit than was proposed, did they not?

A. And some wanted less.

Q. And who wanted less?

A. I can't recall.

Q. State as accurately as you can the statement that you made to Mr. Carmichael, using exactly the same words that you used in your statement to him, concerning the number—no, the matter of sales off card prices.

A. Do you understand, Mr. MacIntyre, I have no records of the words that I spoke to Mr. Carmichael, and therefore I couldn't repeat it word for word. How could I do that?

Q. You never made any record of that, did you?

A. No, sir.

Q. And what you have told Mr. Austin on redirect
4465 examination about that is a matter that you are drawing on your memory for, of approximately two years?

A. It is the substance.

Q. Now, at this meeting of January 6, 1937, at the Biltmore Hotel, you knew at the time that Mr. I. A. Bennett invited you to attend that meeting, that he held an official position in the Rigid Steel Conduit Association, did you not?

A. No, sir, it never concerned me.

Q. Is it your testimony here at this time that you did not know at that period of time that Mr. Bennett was an official of the Rigid Steel Conduit Association?

A. An official?

Q. An official?

A. I didn't know it, if he was.

Q. If any of your writings which are in evidence here contained statements concerning any action that he had taken or was expected to take as an official of the Rigid Steel Conduit Association, how could you reconcile statements in your writings with the last statement that you just made?

A. Mr. MacIntyre, is there a difference between an official and a member of an association?

Q. Yes.

Trial Examiner Norwood: Did you know he was a member at that time?

The Witness: I knew he was a member, but I
4466 thought there is a distinction between an official and a member.

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By Mr. MacIntyre:

Q. Is it your testimony here at this time that at that time you did not know that he was active in the matter of discussions that were taking place at meetings of the members of the Rigid Steel Conduit Association?

A. I knew nothing about the meetings of the Rigid Steel Conduit Association.

Q. It is also your testimony at this time that you had no reason to believe at that time that Mr. Bennett was active in the discussions at the meetings of the Rigid Steel Conduit Association?

A. If he was, I knew nothing about it.

Q. And it is your testimony now that at that time you had no reason to believe that he was active in any of the meetings of the Rigid Steel Conduit Association?

A. I didn't say that.

Q. What is your testimony on that point?

A. I do not know what he was doing at the meetings of the Association; I do not know how active he was.

Trial Examiner Norwood: Did you have an idea at that time that he was active on the subjects he was?

The Witness: I knew he was a member.

Trial Examiner Norwood: Did you know he was taking a leading part in it?

4467 The Witness: No, I did not.

By Mr. MacIntyre:

Q. Is it your testimony at this time that Mr. Bennett did not, previous to January 6, 1937, write you and inform you that he was presenting certain matters for consideration by members of the Rigid Steel Conduit Association during the course of their meetings?

A. Previous to 1937?

Well, my memory does not take me back that far, but he might have done that.

Q. Is it your testimony now that immedidately subsequent to this meeting of January 6, 1937, that Mr. Bennett did not write you to inform you that he was presenting for the consideration of manufacturers during the course of their meetings with him matters which related to practices of manufacturers in their relationship with wholesalers?

A. I don't recall whether he did, but he might have.

Q. And your answer to that question would relate to the time both before and after this meeting of January 6, 1937?

A. That is right.

4468 Mr. Houston: I object to the question, sir.

Trial Examiner Norwood: Read the question.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Objection sustained.

The Witness: I just don't get—

Mr. Austin: You do not have to answer that.

Trial Examiner Norwood: Do not answer.

Mr. Austin: The Judge has sustained an objection to that.

Mr. MacIntyre: If Your Honor please, there were questions asked this witness on direct examination about this invitation of his.

Trial Examiner Norwood: You were asking him whether Mr. Bennett knew something or other. You cannot do that. You can ask him if Mr. Bennett said or did anything that would indicate that he knew it. Bring out the facts. This is the same objection you have been making right along a number of times.

Mr. MacIntyre: I am attempting to find out what his testimony on direct examination meant; that is whether he attempted to state that he knew that, on direct examination.

4469 Q. You were a member at that time that Mr. Bennett invited you to attend this meeting at the Biltmore Hotel on January 6, 1937, you were a member of the executive committee of the National Electrical Wholesalers Association, were you?

A. Yes, sir.

Q. How long have you been a member of that committee?

A. From August 1933 to July 1937, a member of the executive committee.

Q. What other positions did you hold at that time in the National Electrical Wholesalers Association?

A. I might have been chairman of some other commodity committee, because I have been chairman of several

4470 committees during the last ten years.

Q. When were you chairman of the executive committee of the National Electrical Wholesalers Association?

A. I believe I just stated that.

Mr. Austin: If Your Honor please, this is all in the record on direct, and unless he questions the facts I do not see any point in this.

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Trial Examiner Norwood: He may ask him that.

The Witness: What was your question, Mr. MacIntyre?

By Mr. MacIntyre:

Q. During what period of time were you chairman of the executive committee of the National Electrical Wholesalers Association?

A. From July 1934 to July 1936, chairman.

Q. Then you continued after that only as a member of the executive committee?

A. Until July, 1937.

Q. Is it your testimony now that you did not inform Mr. Bennett prior to January 6, 1937, that you had up until July 1936, served as chairman of the executive committee of the National Electrical Wholesalers Association, and that you were subsequent to July, 1936, continuing as a member of that committee?

A. I do not believe I ever informed Mr. Bennett of any of those facts.

4471 Q. I am asking you if it is your testimony now that you never did inform him of it in any way?

A. Then, I must answer I do not know.

Q. Is it your testimony at this time, Mr. Eiseman, that you personally know all of the acts of all of the members of the executive committee and the members of the conduit committee of the National Electrical Wholesalers Association during the period of 1936 to 1940, inclusive?

A. I don't know all of the acts.

Q. Anything that you have stated concerning what they did then is to be limited to those things which were brought directly to your attention, is that correct?

A. Right.

Q. And that is what you meant to do in your answers to Mr. Austin on direct examination, is that correct?

A. Yes, sir.

Q. Mr. Eiseman, why have you maintained the membership in the National Electrical Wholesalers Association?

A. For various reasons.

Q. Will you state all of them that you can at this time?

A. Because I considered it good business practice.

Q. Why did you consider it good business practice to maintain membership and to be active in the activities of the National Electrical Wholesalers Association?

A. Very definitely so, I can state that it has been
4472 beneficial to the company that I am associated. I have made friendships that have been beneficial to the Revere Electric Company.

Q. Friendships among other wholesalers, during the course of your meetings?

A. Well, that is only incidental; friendship with manufacturers whose products were of material benefit to our company in many ways; association activity, I look upon it as being very constructive.

Q. You also consider that it has aided you in some degree in better conducting your business from your own selfish viewpoint?

A. Yes, sir.

Q. And your own selfish interest?

A. Yes, sir.

Trial Examiner Norwood: By that you mean, a legitimate self interest?

The Witness: Why, absolutely.

By Mr. MacIntyre:

Q. That would include, would it, an interest and a desire on your part to increase your profits? Is that one of the things you had in mind?

A. I would say so.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Redirect examination?

4473 Mr. Austin: I have no questions on redirect examination.

Trial Examiner Norwood: Thank you, Mr. Eiseman.

(Whereupon a recess was taken until 2:00 p. m.)

4474 Afternoon Session.

2:15 p. m.

Trial Examiner Norwood: The hearing will come to order.

Call your next witness, please.

Mr. Austin: Mr. Tompkins, will you take the stand, please?

Mr. Robison: Mr. Examiner, may I say this:

At yesterday's hearing, as is shown on page 4342 of the record, I offered in evidence the No. 1 price card of the Safety-Armorite Conduit Company.

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I understood that it was admitted in evidence, but the record only shows that it was marked for identification as Respondents' Exhibit No. 285.

Now, I renew at this time the offer of that exhibit in evidence.

Trial Examiner Norwood: Well, I was under the impression that it was received.

Is there any objection to that proffer?

Mr. MacIntyre: It was my understanding that that exhibit was given to me for the purpose of studying it to see whether or not I had any objection to it, but I cannot locate the exhibit at this moment.

4475 Mr. MacIntyre: Well, I would raise the same objection to this as I did to the original cards that were offered when Mr. Hodkinson was on the stand.

Trial Examiner Norwood: Well the objection is overruled, and the card is received in evidence as Respondents' Exhibit No. 285.

PETITIONERS' EXHIBIT NO. 285 was offered and received in evidence.

Mr. MacIntyre: Mr. Examiner, I would like to hold those exhibits until I have had an opportunity to look at the record that relates to them.

I do not have the record on them and that is the only reason why I asked for a deferred ruling on them.

Trial Examiner Norwood: May he retain Respondents' No. 289-A and B with your permission?

Mr. Houston: Yes, that is agreeable to me.

Trial Examiner Norwood: Very well.

Call your next witness, please.

Mr. Austin: Mr. Tompkins, will you please take the stand?

HOWARD B. TOMPKINS was thereupon called as a witness for the Respondents and, having been first 4476 duly sworn, testified as follows:

Direct Examination by Mr. Austin.

Q. Mr. Tompkins, will you tell us by whom you are employed?

A. The Westinghouse Electric Supply Company.

Q. How long have you been associated with the Westinghouse Electric Supply Company?

A. Six years the first of January.

Q. Now, how long have you represented the Westinghouse Electric Supply Company in N.E.W.A.?

A. About the same period.

Q. Have you served as a member of the N.E.W.A. conduit committee between the period of July 1st, 1938 and July 1st, 1941?

A. Yes.

4477 By Mr. Austin:

Q. Mr. Tompkins, the conduit committee's reports in evidence here, Commission's Exhibits, for the period that you were a member of the conduit committee, refer to the status of an investigation with respect to black enamel conduit versus galvanized conduit?

A. Yes.

Q. Will you tell us whether you personally as a member of the conduit committee favored the elimination of black enamel conduit?

A. Yes, I did.

4485 Mr. MacIntyre: May I ask him a few questions on that?

Trial Examiner Norwood: Yes.

Proceed.

By Mr. MacIntyre:

Q. Now, Mr. Tompkins, is it your understanding that the only bids that are here for use in connection with study, this Respondents' Exhibit No. 292, are the bids of your company?

A. Yes. These are only our papers.

Q. And you have never seen the bids which purport to be tabulated here in Respondents' Exhibit No. 292 other than your bids, have you?

A. I personally?

Q. Yes.

A. No.

Q. In fact, they are not at your company, at the company's offices, are they?

A. The originals of those papers?

Q. Yes.

A. No.

Q. Are you in a position to testify here today that the tabulation of the bids, Respondents' Exhibit No. 292, is correct as to its listing of the bid prices of all of the other companies whose bids you have never seen?

Mr. Taylor: Just a minute.

4486 Your Honor, I am going to object to that question.

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4502 By Mr. MacIntyre:

Q. Mr. Tompkins, is there anything in this exhibit, Respondents' Exhibit No. 292-A to S, for identification, which shows what the net prices as quoted by the conduit manufacturers to wholesalers were on the type of conduit and the sizes of conduit on which these firms named in this exhibit in turn submitted bids to the Federal Government?

A. I don't understand your question.

Mr. MacIntyre: Read the question, please.

Trial Examiner Norwood: Read it.

4503 (The question referred to was read by the Reporter.)

The Witness: No.

By Mr. MacIntyre:

Q. There is nothing there to show what these card prices were, is that correct?

A. Well, do I understand you to refer to the prices as bid?

Q. No, no. I am talking about the net prices of the manufacturers, card prices on the conduit which—

A. The cost prices?

Q. The card prices of the manufacturers; the net card prices?

A. No.

Q. There is nothing in here that shows that?

A. No.

Q. What, then, is the source of the information which appears immediately following the phrase "Open market values" as set forth on that exhibit?

A. Those prices are the prices which were figured would be the prices that we figured from the current card in effect.

4504 By Mr. MacIntyre:

Q. That is the suggested retail prices?

A. Well, the prices that we acting as an agent, if we sold that pipe out of our consigned stock, as their agent, which we would have figured.

Q. That is the suggested resale price?

A. Yes, sir.

Q. Is anything in that exhibit, Respondents' Exhibit 292-A to S, for identification, from which you could testify

as to the quantities or sizes and the types of conduit on which the bids were made?

A. Shall I answer that?

Q. Yes. Is there anything in that exhibit from which you could testify and give information on those items?

A. Well, only the market value as stated in this bid is the price that we had from our own manufacturer; I don't know anything about what anybody else's cost was, but this is the price that we would have quoted it at to sell this conduit out of the manufacturer's stock.

Q. But you do not attempt to say here that the so-called open market value is the suggested resale card prices which manufacturers gave to all of the other people whose names appear in this exhibit as bidders?

A. I don't know what they gave to anybody else. This represents the price that our own manufacturer
4505 authorizes us to sell his product for at that time.

Q. In these particular instances?

A. At that particular time.

Q. And can you, in looking at this Respondents' Exhibit for identification 292-A to S, tell us from any information that is contained in it what the sizes of the conduits were, the types, or the quantities that were involved in those bids?

A. By referring to the original record there, yes.

Q. You would have to go back to other records?

A. These are all identified by inquiry number, and for the purpose of preparing a list; it would have been an almost endless job and it would have been a terrific amount of typing to show each one of these items on these notes, but this represented a summary, but we identified each inquiry by number here, which you can refer back to the number of the original record.

Mr. Gilpatric: May the record show the witness is pointing to Respondents' Exhibit 294-A to blank.

By Mr. MacIntyre:

Q. 292 does not show any of that information, does it?

A. Any what information?

Q. As to the sizes, quantities and types of conduit involved?

A. No; it only summarizes the bid in total.

4506 Q. And it does not show in any case the unit prices on any size of conduit, does it, on the exten-

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sion, grouping all of the totals on which bids were placed on any size of conduit, isn't that correct?

A. That is right, but this is the way the bids were put in.

Q. As to any one of these bidders who bid the unit prices—that is any two of the bidders who bid the unit prices on a half a dozen sizes of conduit in different quantities and were tied as to bids on the unit prices in eight of the items out of ten, but not tied in the total of their bid on a particular project, none of the facts concerning the tie bids on the unit prices can be ascertained from Respondents' Exhibit 292 for identification, can they?

A. No.

Q. And you cannot get that information by going back into any of the information contained in Respondents' Exhibit for identification 294-A to Z blank, can you?

A. You can get our unit prices.

Q. You cannot get the unit prices of any of the other bidders?

A. No, the unit prices were never read out, and the unit prices were not considered in the letting.

As a matter of fact, all of these bids, if you review these, because of the competitive situation at that time and right along, unit prices mean nothing, and in com-
4507 puting these bids you will find in almost every case, I believe, that while the unit extension was figured here simply as a guide to our quotation clerk, the bid that we submitted right here, and you will find in no case, I believe, or you may find some—I don't know where—unit prices may have added up, but in the great majority of cases I think you will find that the lump sum bid was simply submitted at the best cost we could get, and it was a case of so much money for the lot or nothing.

Q. Whether the unit prices were uniform or identical, if that means nothing to you, it means quite a lot to us here, whether or not that in any of the information that you have tabulated in exhibits, Respondents' Exhibits 292-A to S for identification, and which is contained for that matter in any of the information in Respondents' Exhibits for identification 294, if you can tell us whether that in many instances the bidder—two or more bidders—in any one of those projects were tied on their unit price bids, but not necessarily tied on the extension of the total on all items on the opening?

A. Well, no, we have—in fact, we wouldn't be interested in what their unit prices have been. We don't care.

Trial Examiner Norwood: He is asking you what these papers show.

The Witness: No.

4508 Q. You cannot determine this fact in any of these papers?

A. No.

Q. In any of the papers in Exhibits 292 or 294, can you?

A. No.

Q. Can you determine by looking at any of the information or studying any of the information as contained in Respondents' Exhibit 292 where the delivery points of the conduit are that is involved?

Mr. Gilpatric: I object to the question. The paper speaks for itself; it does not show the telephone numbers.

Trial Examiner Norwood: The objection is overruled. He is trying to find out what these tabulations show.

Mr. Gilpatric: He asked what they do not show.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: I am asking whether he can determine from the exhibit.

The Witness: Yes, it—

Trial Examiner Norwood: This is proper voir dire.

The Witness: By referring to this inquiry number and going to this original inquiry, the destination is on the inquiry.

By Mr. MacIntyre:

Q. It cannot be determined from any information which itself is contained in 292, can you? You cannot look

4509 at any information contained in 292 and tell us what the delivery points are on any of those openings?

A. Not from this, without referring to the supporting original papers from which it was compiled.

Mr. MacIntyre: I believe that is all the voir dire I care for on that.

Trial Examiner Norwood: Proceed, Mr. Taylor.

By Mr. Taylor:

Q. Mr. Tompkins, have you prepared a tabulation which shows both the on and the off card sales of rigid steel conduit of the Westinghouse Electric Supply Company in the eastern district?

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A. I didn't prepare it, but I had four of my men prepare it.

Q. It was prepared under your supervision?

A. That is right.

Q. Pursuant to instructions given by you?

A. That is right.

Q. What year or years does that tabulation cover?

A. The year 1937.

Q. What reason, if any, did you have for selecting the year 1937?

A. Because you asked me to do it for that year.

Q. If I had asked you to make a tabulation covering the years 1936 to date, would you have been able to do that?

4510 A. Not unless I had about five years to do it.

Q. Did you ever attempt to make a tabulation for more than one year?

A. No, when you asked for the total tabulation, I showed you the magnitude of that job, and it just couldn't be done in the time, so you requested that we do it for one year, for 1937.

Q. In connection with the preparation of such tabulation and directing your attention particularly to such conduit as was sold on a contract, that is a specific building job contract, will you tell us what date you used to determine what card was in effect at the time of that particular sale?

A. The date of the contract.

Q. In connection with sales on orders, will you tell us what date you determined the card which was in effect at the date of those sales?

A. The date of the order.

Q. Were the figures obtained in such tabulations prepared from your sales tickets?

A. Yes.

Mr. Taylor: Will you mark this for identification?

(The document referred to was marked "Respondents' Exhibit No. 295" for identification.)

By Mr. Taylor:

Q. I hand you Respondents' Exhibit No. 295 for

4511 identification and ask you if you will explain to us the method you used when preparing the tabulation to which you have referred, in determining whether or not

any particular sale was on the card or off the card which was then current?

A. Well, I had these four fellows go through the 1937 file and pull out all of the conduit sales which are there (indicating), and then they found out what dates these extended from, because some of the contracts and orders were taken in 1936, but were not sold until 1937—were not shipped until 1937, and they got the records of what card was in effect as of the dates covered by these tickets, and then tabulated them based on the prices shown on the ticket, whether they were sold at the current card or whether they were sold below the current card.

Q. Just to summarize your testimony, they took the unit prices and figured out what would be the card price, and if that did not coincide with the prices on the sales ticket, it was listed as an off card sale; is that correct?

A. That is correct.

Q. I now show you Respondents' Exhibits 293-A to 293-Z-80, inclusive, and ask you if that is the tabulation to which you have referred?

A. Yes.

Q. Directing your attention to Respondents' Exhibit 293-A to Z-80, inclusive, I ask you to tell us in terms
4512 of dollar volume what was the dollar amount of the sales of conduit made by your company through the year 1937, which were sales on the then current card?

Mr. MacIntyre: I object to the witness reading figures from a document which has not yet been determined as to whether it is admissible in evidence. I would like to see the document and state whether or not I have an objection to his testifying from it.

Trial Examiner Norwood: Objection sustained.

Mr. Taylor: He said he would like to see the document first and determine.

Trial Examiner Norwood: Yes.

Mr. Taylor: I ask Your Honor to reserve your ruling until he determines. It has not been offered yet.

Trial Examiner Norwood: I will sustain the objection to his reading from that document until you show that it is something that refreshes his memory or that can properly be received in evidence.

Mr. Taylor: Would there be any objection to the tabulation itself?

Trial Examiner Norwood: Let us find out.

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Mr. Taylor: All right, then I will offer the tabulation in evidence.

It is Respondents' Exhibit 293-A through 293-Z-80, inclusive, but I would like to say this at this point, I
4513 would prefer not to do that unless I am forced to.

I would prefer to have Mr. Tompkins give us the figures which I have asked him, drawing no conclusions and to only state what that tabulation shows in terms of dollar volume, for this reason, that, as you can determine from those invoices (indicating) it is a gargantuan task to prepare any sort of tabulation.

Trial Examiner Norwood: How many thousand invoices have you on the table?

Mr. Taylor: I do not know.

Trial Examiner Norwood: Can you estimate it, Mr. Tompkins?

Mr. Taylor: There are 106 pages on that tabulation, each page will contain approximately 20 figures, so it would be a little over 2000 invoices; that is a very rough estimate. As I was going to say, our files are kept by customers, so as they pull tickets they put them down by customers, so that tabulation will show volume, it will show the sales for one customer, which may be two sales of conduit during 1937—January and December—those are two figures on the page; the next three might be April, May and November, and so forth. It is a hopeless jumble; I have had three men trying to reduce it to monthly totals for the past week and a half, and I have not been able to get the figures to come out accurately.

4514 Trial Examiner Norwood: You are offering 293-A to Z-80, and at the same time proffering these two thousand invoices on which they are based, for checking.

Mr. Taylor: Yes, I am tendering them for cross-examination. I do not think it is very helpful.

Trial Examiner Norwood: In the way of tabulation the material must be available for checking far beyond the time which we could permit for cross-examination.

Mr. Taylor: The material will be available to the conclusion of this case, Your Honor, certainly.

Trial Examiner Norwood: The thing has the same status as the proffer there of 292.

Mr. Gilpatric: But note these are Westinghouse's own sales.

Trial Examiner Norwood: That is, it is in the same status, it is proffered here now.

Mr. Taylor: I will be glad to withdraw that proffer if Mr. Tompkins would be permitted to give the totals, but that will be available to Mr. MacIntyre, however, for the purpose of check.

Mr. Gilpatric: It would save a lot of paper in the record, Mr. MacIntyre.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

4515 Mr. MacIntyre: I would like to ask the witness a question on voir dire on this question of 293-A to Z-80.

Trial Examiner Norwood: All right.

By Mr. MacIntyre:

Q. Mr. Tompkins, is there anything in this Exhibit 293 by which it could be determined or from which it could be determined whether any of the sales made by your company and which are reflected in this exhibit, were at or above the net card prices of the manufacturers on whose conduit you quoted the prices, and made these sales?

4516 The Witness: Only the column under which they are listed from the computation that was made, as I explained to you it was made.

By Mr. MacIntyre:

Q. Is it your testimony that this column entitled "on card" and this column entitled "off card", and the figures in those columns below those captions show whether or not that those sales indicated were on or off the manufacturers' net card prices to you?

A. That is the way that they were figured by the men who tabulated these tickets. I explained that, how they figured it; they match these tickets against the cards.

Mr. Taylor: If Your Honor please, I think the witness is confused. I would like to have the question read to him.

Trial Examiner Norwood: Read the question, Mr. Reporter.

(The question referred to was read by the Re-
4517 porter.)

Mr. Austin: I do not think Mr. MacIntyre will object to this:

What Mr. MacIntyre is finding out is, Mr. Tompkins, whether those prices or whether that exhibit for identification shows in any way whether your cost was above or below the net card cost to you figured on the current card.

The Witness: Our cost?

Mr. Austin: Yes.

The Witness: No, these show our selling prices.

By Mr. MacIntyre:

Q. I am asking about the selling prices of the manufacturer to you; that doesn't show whether or not you sold in accordance with their net card prices, that is, their net card selling prices to you, does it?

A. Their prices to us?

Q. Yes.

A. No, our costs are not shown on here at all.

Q. And nothing in this Exhibit 293 will show that, will it?

A. Not our costs, no.

Mr. MacIntyre: These respondents, if Your Honor please, are charged in the complaint with co-operating in maintaining the card prices of the manufacturers, and there is also a charge, of course, that they have co-operated in bringing about a concerted establishment of resale
4518 —suggested resale prices—on the part of the wholesalers, that is suggested by the manufacturers for the wholesalers. We are principally interested here in the way in which the manufacturers, through their concert with the wholesalers in concert have maintained the card prices of the manufacturers, the net card prices.

This exhibit does not help us in that respect at all.

Trial Examiner Norwood: Does it help us in any respect is what I have to decide.

Mr. MacIntyre: I do not think it helps us at all.

Mr. Taylor: Mr. MacIntyre has made that point before. It might be some support for his theory that we are also charged with conspiracy of maintaining the manufacturers' price to the jobber, although that is somewhat hazy from the wording of the complaint, but we are definitely charged with conspiring to maintain resale prices, and that goes to that issue, to the resale prices only.

Mr. MacIntyre: That is a conspiracy, however, in agreeing to accept those prices.

Trial Examiner Norwood: I shall overrule the objection and receive this 293.

Mr. MacIntyre: I have not been able to state an objection to it, if Your Honor please.

Trial Examiner Norwood: I understood you object
4519 to it.

Mr. MacIntyre: I have not stated an objection on the record, and I want to state that I do object to it on the ground that it is incompetent, irelevant and immaterial.

Mr. Taylor: If Your Honor please, before you accept that into evidence I would be glad, to avoid burdening the record, to introduce the evidence on there by the means with which I started sometime ago, just to have Mr. Tompkins give us for the purpose of the record the on card and off card dollar volume of sales. From the point of view of the tidiness of the record, that is what I would prefer to do, at the same time making it available to Mr. MacIntyre.

Trial Examiner Norwood: For cross-examination?

Mr. Taylor: For cross-examination.

Mr. MacIntyre: If Your Honor please, no cross-examination, if the witness is now permitted to give us totals on the last page of this exhibit, can present the information as shown by all of these bids and the different sales which are reflected on here. No cross-examination can do that. There is considerable to that story if he is permitted to give the import of it.

Trial Examiner Norwood: Repeat your question.

Mr. Taylor: My original question, I believe was:

By Mr. Taylor:

Q. Mr. Tompkins, I call your attention to respond-
4520 ents' Exhibit 293-A to Z-80, and ask you if you will give us in terms of dollar volume the amount of sales of rigid steel conduit made by your company for 1937 which were sold at the then current card prices.

Mr. Taylor: And I was going to ask him the same question the other way, because, I mean, otherwise it does not mean anything.

Trial Examiner Norwood: Can he state the total sales, and then can he give us all the totals there in the total sales, then give the total off the card, and then the total on the card?

Mr. Taylor: We can give the total on card and off card, and then it is a matter of simple computation.

Trial Examiner Norwood: Let him give that.

Mr. MacIntyre: If Your Honor please, I object to that, and I state that it would call for incompetent, irrelevant and immaterial testimony, and if any material of that kind is to be received, it should be received from the exhibit rather than having the witness testify from the exhibit and reading it into the record.

Trial Examiner Norwood: Yes, but you object to the exhibit?

Mr. MacIntyre: I object more to the oral testimony based on the exhibit, and I contend that if anything is to be received it ought to be the exhibit, but I object to
4521 the exhibit.

Trial Examiner Norwood: Yes, I understand that. I am overruling your objection, and I will ask him to answer that question, that is with the understanding that all this data is available to you for checking and cross-examination thereafter if you want it.

Mr. Taylor: That is correct, it will be available.

Mr. MacIntyre: If Your Honor please, on this point, there is a question asked the witness, and it presupposes that the witness will read into the record figures from an exhibit, and not to look at the exhibit for the purpose of refreshing his memory and recollection because he has never had any memory and recollection on those figures, and, secondly, if those figures should go in, they should go in through an exhibit, and not through testimony.

Mr. Taylor: I probably can lay a foundation for that, if you want it.

Trial Examiner Norwood: Go ahead.

By Mr. Taylor:

Q. Mr. Tompkins, as to your remuneration for your services with the Westinghouse Electric & Supply
4522 Company, do you receive a straight salary?

A. A base salary, yes.

Q. A base salary?

A. Yes, and a participation in the earnings of the eastern district.

Q. And that is determined on your total net earnings?

A. On the total net return on the investment in the eastern district.

Q. That is right. In the course of determining what is the total of your net return, you have occasion to examine the totals on every commodity you sell, do you not, at one time or another?

A. Every month you get a report on all commodities.

Q. Do you feel, from your recollection, having examined those reports for 1937, that the figures contained upon the Respondents' Exhibit, for identification, 293-Z-80, serve to refresh your recollection in connection with what the total figures for that year were on rigid steel conduit?

A. They are a division of those figures, but I never could remember any of these figures from month to month.

Trial Examiner Norwood: These figures, can you testify as to their correctness? That is, the figures that you would give in answer to that previous question?

The Witness: They are correct, so far as I know, and so far as I believe them to be entirely correct, because
4523 four of my experienced men, who are familiar with conduit and have dealt in conduit for years, prepared these figures from this record (Indicating), and they were prepared in the usual way that any records for any purpose are prepared, and I believe them to be entirely correct.

By Mr. MacIntyre:

Q. But then all you know about it is that they prepared them from those records?

A. That is correct.

Mr. MacIntyre: If Your Honor please, I contend that the witness, therefore, has no memory or recollection as to what is on or off cards, and if anything is received concerning that, it ought to be in the form of the exhibit rather than the oral testimony based on what somebody else did.

By Mr. Taylor:

Q. From your recollection, do those figures look approximately right to you, in so far as they relate to any percentage that might be arrived at in determining what portion was off card and what was on card?

A. Those figures check very closely with what I gave from my memory before we went to the files.

Trial Examiner Norwood: It appears to me that, though not entirely satisfactory, that it would be less unsatisfactory to counsel for the Commission, that exhibit be received, so I shall overrule his objection, and receive
4524 Respondents' Exhibit 293-A to Z-80, on the condition that all of those invoices there that are similar to Respondents' Exhibit 295 for identification remain avail-

able to counsel for the Commission for the purpose of checking at any time he wants to.

Mr. MacIntyre: I want to ask if Mr. Taylor will undertake to send those to me in Washington, so that I may have them checked.

Mr. Taylor: I will make them available to you. You can take them with you if you want to, Mr. MacIntyre.

Trial Examiner Norwood: Will you deliver them to the Federal Trade Commission office here in New York?

Mr. Taylor: I will consider that an imposition, but I will do so if you direct me.

Trial Examiner Norwood: I will not direct you. The counsel may agree or they may not agree.

Mr. Taylor: That information, Your Honor, will be available at any time Mr. MacIntyre wants it, but I do not see why I should be a dray horse for him. That is the situation.

Trial Examiner Norwood: They are received in evidence and conditioned as stated.

RESPONDENTS' EXHIBITS NO. 293-A through Z-80 were offered and received in evidence.

4525 By Mr. Taylor:

Q. Mr. Tompkins, from your experience and your examination in connection with the preparation of Respondents' Exhibit 292, can you tell us whether there has ever been a bid submitted in your district to the United States Government from the beginning of 1939 through the end of April, 1941, which was submitted at the then current card price?

A. I do not think so. I do not ever remember submitting any bids on the card. It would be useless.

Mr. Taylor: That is all I have, Your Honor.

Trial Examiner Norwood: You may cross-examine.

Cross-Examination by Mr. MacIntyre.

Q. Now, referring to this last answer that you gave to the last question that was asked you by Mr. Taylor, Mr. Tompkins, if you, as you said,—that is, your company, the Westinghouse Electric Supply Company,—did not submit any bids to the Federal Government or any public agency under seal on card prices during the period of 1939, 1940 and 1941, will you please then explain how you and your

competitors in the submission of a bid under seal to
4526 the Bureau of Supplies and Accounts of the Navy Department, under date of October 29, 1940, as is shown by Commission's Exhibit 719, manage to quote exactly the same as all of your competitors did on that letting?

Mr. Taylor: I object to that question, Your Honor, on the ground that it is a misstatement of the record.

Trial Examiner Norwood: In what respect?

Mr. Taylor: In the respect that I asked Mr. Tompkins, in connection with the sales in his district; the Westinghouse Electric Company, there is no secret about it, has thirteen districts comprising 78 branches, and Mr. Tompkins is manager of the eastern district that covers New York, northern New Jersey, and southern Connecticut.

The Witness: I do not think this was our bid.

By Mr. MacIntyre:

Q. There are some bids there for the Brooklyn Navy Yard in Brooklyn, New York, are there not?

A. Yes, but we do not necessarily bid on all of those.

Q. Your company bid on that, according to that exhibit?

4527 A. Yes, but it might not be my district. I could not answer that question without looking up this particular bid. We do not submit very many bids to the Navy, that is, not in this district; most of our bids to the Navy are submitted from Washington.

Q. You in the running of the sales for the Eastern District of the Westinghouse Electric & Supply Company do it as a part of the operation of the company, do you not?

A. I have no responsibility to anybody for anything that I do in the Eastern District.

Q. I know, but whatever you do in the Eastern District of the Westinghouse Electric & Supply Company you do it as a part of the company, do you not?

A. Oh, sure.

Q. You do not do it on your own personal account, aside and apart from the company, do you?

A. I decide what I do in the Eastern District without any reference to anybody else in the company.

Q. What you do is in compliance with the Westinghouse Electric & Supply Company's acts?

A. Of course, certainly I am working with the Westinghouse Electric & Supply Company.

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Trial Examiner Norwood: This exhibit which we just received here includes sales such as are covered by the last exhibit?

4528 The Witness: These (indicating)?

Trial Examiner Norwood: Yes.

The Witness: They include any sales that were made during the year 1937.

Trial Examiner Norwood: But does it include any sales that your company makes in the same district?

The Witness: In the Eastern District?

Trial Examiner Norwood: Yes.

The Witness: Yes, sir.

Trial Examiner Norwood: Does it include that exhibit that counsel has just shown you there?

The Witness: I do not know. I could not answer that.

By Mr. MacIntyre:

Q. Will you please examine this Respondent's Exhibit 293-A to Z-80, and let us know whether or not you can determine from anything contained therein whether the quotations or sales based thereon as made by the Westinghouse Electric Supply Company in October 29th, 1940, to the Bureau of Supplies and Accounts were involved?

A. No, I couldn't from this.

Mr. Taylor: I am going to object to that question, and with your permission I would like to point out an error into which I believe some of us here have fallen at this time. That is, one has to ask the district manager

4529 for his sales; he is talking about sales in his district; he is not talking about the point of destination.

Trial Examiner Norwood: I was trying to determine as to just what these figures here that are given in Respondent's Exhibits 293-A to Z-80 cover, whether that is representative of the sales of the company, or just what they mean. Of course, when I received them I thought they went to the entire company.

The Witness: I can answer that.

Trial Examiner Norwood: Proceed.

The Witness: They represent the sales, the entire sales of the Eastern District, which covers New York State, with the exception of Buffalo—

Trial Examiner Norwood: (Interposing.) That is all the sales which your office has made in the Eastern District?

The Witness: (Continuing) —and New Jersey, with the exception of Trenton.

Trial Examiner Norwood: Sales to the Government as covered by that tabulation which the counsel has just shown you are not included in these figures, are they?

The Witness: They may, or they may not, if they were within that year, if we made the sale, and we bid.

Trial Examiner Norwood: You just said that you did not make that other sale?

4530 The Witness: I said I didn't know whether I made it or not, I did not say I did not make it. That was not a sale, I believe it was a quotation, whether I made that quotation.

By Mr. MacIntyre:

Q. Can you not tell by looking at the schedule number, the lot number, and the opening date, and the information that that was made to the Bureau of Supplies and Accounts of the Navy Department on that date tell us whether or not you were involved in that bid?

A. I cannot. I can go back to the office and look it up.

Q. When you prepared this information at the instance of Mr. Taylor for use in this case, that is the information contained in Respondent's Exhibits 293, you were not asked, and you were not interested in covering all of your bids to the Navy Department—the bids made by your company—such as those evidenced by Commission's Exhibit 719, were you?

A. Yes, we covered every sale that we made for the year 1937, whether it was for the Navy Department, or John Jones, or Bill Smith, or anybody else; that represented our total conduit sales for the year 1937. Incidentally, this is in 1940 (indicating).

Q. Yes, I have some three for 1937 that I will show 4531 to you.

4532 (Whereupon at 4:30 p.m., January 14, 1942, the hearing in the above-entitled matter was adjourned.)

4535 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment, the hearing in Docket No. 4552 is now reconvened in the Conference Rooms, 28th floor, 15 Broad Street, New York, New York, at the Offices of Cravath, deGersdorff, Swaine & Wood, on January 15, 1942, at 10:00 a.m., eastern standard time.

On January 13th I directed the Reporters to place the names immediately after those of the Attorneys of the Reporters who were working on the record on that day, and it appears that this tends to make some confusion as to the identity of the Official Reporters, so the names may be left off in so far as their following the names of counsel is concerned.

However, I should like to have the Reporters' names spelled out in the margin on the first page of their portion of the transcript.

I think that this would end all confusion, and it is rather important for us to know who reported the record.

I will state for the benefit of the Reporters that that was entirely my own suggestion.

No, Mr. Howard B. Tompkins will resume the stand for further cross-examination.

4546 *Cross-Examination (Continued) by Mr. MacIntyre.*

Q. Now, Mr. Tompkins, referring to this last answer that you are shown by the record to have made to the question, to the last question asked of you by Mr.
4547 Taylor, and keeping that in mind, I want to now ask you whether or not it is now your testimony that in all except one instance you, as a representative of the Westinghouse Electric Supply Company, in the submission of bids to the Procurement Division of the Treasury Department in your eastern district during the years 1939 and 1940 submitted bids off the card?

A. No; not unless I checked that whole thing for that purpose, which I said I hadn't checked before.

I just saw one there as I glanced through it.

Now, the only way I can answer that question, Mr. MacIntyre, would be to check those sheets and find out how many were on the cards.

Q. Then, what is the basis of your testimony which you gave as is shown on page 4525 to the effect that all bids submitted by you in that period of time were off card?

A. I didn't say that.

Mr. Austin: If Your Honor please, unless I misunderstood what was to be in the record this morning, Mr. Tompkins admitted that he was mistaken in that answer.

I do not see any reason in going further here.

I object to the question on the ground that it is unnecessary. I guess that is the basis for the objection.

Trial Examiner Norwood: Well, he can ask for a further explanation of his correction, I presume.

Read the question, please.

4548 (The question referred to was read by the Reporter.)

By Mr. MacIntyre:

Q. Even if your answer there is limited to your submission of bids to the Treasury Department?

4549 The Witness: I have never checked this record for that purpose.

I have never compared our bids with the card bids until that question was raised, and I had no recollection at the time I answered that question how many bids, if any, were on the card.

That is the reason that I answered that, that I didn't believe so.

4550 By Mr. MacIntyre:

Q. What is your testimony now, Mr. Tompkins, as to whether or not during that period of time you did or didn't submit bids to the Treasury Department on or off cards?

A. I still haven't checked the record for that answer.

Now, if I could have that record I will be glad to go through it and check how many bids were on the card, but I haven't made any comparison in bids with the card prices on that record.

Q. Well, isn't it a fact, Mr. Tompkins, that you are now in no position to testify whether or not you submitted a number of bids to the Treasury Department during the period 1939 and 1940 in accordance with your card?

A. What do you mean "I am in no position"?

Mr. MacIntyre: Please read the question.

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Trial Examiner Norwood: Read the question, please.
(The question referred to was read by the Reporter.)
The Witness: No; not unless I checked that record.

By Mr. MacIntyre:

Q. In other words, you would have to make a study of your records before you could answer that question, is that right?

A. That is right.

Q. And yet you attempted to answer a question
4551 bearing on that point that Mr. Taylor asked you without referring to your records, didn't you?

A. I gave an opinion; yes.

Q. I see.
And you have found since that your opinion, at least in one instance, was erroneous, isn't that correct?

A. That is right; that is right.

Q. You are in no position at this time to tell us in how many other instances your opinion that you have expressed here on that point is erroneous, are you?

A. I haven't expressed any other opinions, except that one on that point.

Q. But you can't tell us now to what extent your opinion that you did thus express on that point is erroneous, can you?

A. Not without checking that record.
I said that I never checked the record from that point.

By Mr. MacIntyre:

Q. Mr. Tompkins, referring to Respondent's Ex-
4552 hibit No. 293-A to 293-Z-80, inclusive, will you please look at that exhibit and tell me whether or not you have included in that exhibit any of the bids submitted by you as a representative of the Westinghouse Electric Supply Company to the Navy Department or to the Panama Canal during the year 1937 (handing paper to witness)?

A. If we made any sales to either of those agencies during 1937, they should be in here because this represents our total sales by the eastern district of conduit and elbows and everything for that year.

Trial Examiner Norwood: Who do you mean by "we"?
The Witness: The eastern district of the Westinghouse Electric Supply Company.

By Mr. MacIntyre:

Q. Well, Mr. Tompkins, will you please examine that exhibit and let me know and state for the record whether or not it contains any showing of the bid made by your company to the Navy Department on May 11, 1937.

Mr. Taylor: If Your Honor please, if we are going to do that, I suggest that we take a half hour or an hour's adjournment because that is the time it is going to take to find that bid.

Trial Examiner Norwood: Well, he may answer, and if it takes two hours he will have to take it.

Mr. MacIntyre: He did not want any information
4553 in yesterday as to what it is based on.

Trial Examiner Norwood: Well, I will let the witness run through those and answer the question, and the can tell us whether or not he can answer it.

The Witness: Not from this record.

If we made the sale that you referred to during that year, and if we got the bid, if we received the order on the bid that you refer to, it is in that pile of tickets there somewhere (indicating).

By Mr. MacIntyre:

Q. Well, Mr. Tompkins, assuming that you made the bid and didn't get the order?

A. Well, then, it isn't here.

This is based on our orders. This is our orders and not bids.

Q. In other words, this tabulation, Respondents' Exhibit No. 293, in no wise shows what percentage of quotations that you made to prospective buyers on the cards, does it?

A. Quotations?

Q. Yes.

A. No; sales. This is sales.

Q. But it makes no showing of what percentage of quotations you made on the cards?

A. Not quotations. We have no record of our quotations for the year 1937.

4554 Q. And can you in the examination of the material included in that exhibit tell us as to those instances where you did submit bids to the Navy Department and secured the order, whether they, that is, those bids, were on or off the card during 1937?

A. If they were received—if our bid was on the card and we received the order on that bid, then it should be listed on the on card portion of this report; but to identify the bids you would have to go through those tickets over there to find them (indicating).

Q. Will you examine those invoices and show us any invoice that is contained in that group of any bid that you submitted to the Navy Department, and pursuant to which you made a sale, which was off your card prices at the time you made the bid?

Mr. Taylor: I believe the record shows that I have tendered to Mr. MacIntyre for cross-examination all the sales tickets which were used in the compilation of Respondents' Exhibit No. 293.

Trial Examiner Norwood: We will take a recess at this time.

(Recess taken.)

Trial Examiner Norwood: Come to order.

Ask your question.

By Mr. MacIntyre:

4555 Q. Mr. Tompkins, you have examined Respondents' Exhibit 293-A to Z-80, inclusive, and you have also looked over some of the invoices which Mr. Taylor has submitted to me for checking of that exhibit.

Are you in a position now to testify as to whether that Exhibit 293 has listed on it all tickets or invoices which show its shipments in the eastern district of the Westinghouse Electric Supply Company during the year 1937?

A. I believe it has; I didn't prepare it personally.

Q. Are you prepared to testify that it does contain a listing of invoices for that year?

A. To the best of my knowledge, it does.

Q. Do you know that, whether it does so contain?

A. No; I did not prepare the record myself; therefore, I could not know. I did not do the work myself; I had four of my people do it. I believe it has all of them, but I cannot say I know it.

Q. You have been examining Respondents' Exhibit 293 for about an hour, have you not?

A. I do not know how long it has been.

Q. Close to an hour. And you have in that time been looking for a listing on 293 of the material outlined on two invoices of your company in the eastern district which

shows shipments of conduit to the Brooklyn Navy Yard, and you have not been able to locate in that time
4556 the shipments of that conduit to the Brooklyn Navy Yard on 293, have you?

A. Not up to the present time.

Mr. Taylor: I want to object to that.

Trial Examiner Norwood: What do you want to say? Did you object to something now?

Mr. Taylor: I object to the question as not fair under the facts; it does not state them.

Trial Examiner Norwood: Objection overruled.

Mr. MacIntyre: Will you read that question?

Trial Examiner Norwood: The question has already been answered.

By Mr. MacIntyre:

Q. I show you Commission's Exhibit 730, which shows that the Westinghouse Electric Supply Company on May 11, 1937, submitted a bid to the Bureau of Supplies and Accounts of the Navy Department on 15000 feet of ½ inch galvanized conduit, 16000 feet of ¾ inch galvanized conduit, 5000 feet 1 inch galvanized conduit, 800 feet 1¼ inch galvanized conduit, 1400 feet of 1½ inch galvanized
4557 conduit, 3000 feet 2 inch galvanized conduit, and ask you to state whether or not any order received by your company, if any, pursuant to that bid would be listed in Respondents' Exhibit 293?

A. Only if the order came to the eastern district, and I do not know that.

Q. You are not in any position to state whether or not that was handled through the New York office of the Westinghouse Electric Supply Company, or whether it is listed on Respondents' Exhibit 293?

A. No.

4562 Q. Is it your testimony, Mr. Tompkins, that the New York office of the Westinghouse Electric Supply Company submits all bids to the Navy Department for the delivery of conduit to the Brooklyn Navy Yard?

A. No, sir.

Q. What proportion of the bids are submitted by the New York office of your company for the delivery of what portion of conduit that your company finally delivers to the Brooklyn Navy Yard out of the total?

A. I would not have the slightest idea.

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Q. There is nothing contained in Respondents' 4563 Exhibit 293 which would answer that question, is there?

A. Only two deliveries that I have been able to find in the short time we have had to go through them.

Q. But the finding even of those two deliveries does not answer the question as to what proportion of the total made by your company to the Brooklyn Navy Yard is involved, does it?

A. No.

Q. And there is nothing in the invoices upon which 293 purports to be based or 293 itself, which will answer that question, is there?

A. No.

Q. (Continuing.) Or from which an answer to the question can be determined?

A. No.

4565 Q. Is it also your testimony that when you and your competitors bid exactly the same prices to the New York office of the Procurement Division of the United States Treasury Department, and in doing so bid card prices, that neither you nor they received an order in response to such bids?

A. I don't know anything about them. I was only talking for myself.

Q. In other words, when you and they were tied after having bid on the cards, you do not know whether they got the order or not?

A. No, to the best of my knowledge, whenever we were tied on the card neither of us were low.

Q. But are you prepared to testify that in such instances the Government did not award a contract to one of you that were so tied?

A. They were not the low bidders.

Trial Examiner Norwood: He did not ask you that. He asked you whether or not it was in your knowledge that the Government had awarded a contract in the case 4566 of identical bidders. Do you know anything about that?

The Witness: On the card, I thought he said.

Trial Examiner Norwood: Yes, bidding on the card.

The Witness: I said before, I don't ever recall receiving an order from the Treasury Department at the card prices.

Trial Examiner Norwood: Do you know whether or not, or do you recall whether or not they ever awarded it to anybody else?

The Witness: No, sir, I do not know.

By Mr. MacIntyre:

Q. You do not know?

A. No.

Q. Is it your testimony, Mr. Tompkins, that you have knowledge of all of the things which were done by all of the members of the conduit committee of the National Electrical Wholesalers Association during the period of time you have been a member of that committee?

A. Well, I attended the meetings of the committee, and I assume that I knew what was going on. I was present at the meetings, and I do not quite understand your question.

Mr. MacIntyre: Please read the question to the witness.

Trial Examiner Norwood: Read the question, Mr. Reporter.

4567 (The question referred to was read by the Reporter.)

The Witness: At the regular meetings, yes.

By Mr. MacIntyre:

Q. You attended all of the meetings of the conduit committee during that period, did you?

A. I don't recall positively. I believe I did. But the record of attendances in the files of the N.E.W.A. would show. I don't recall missing any meetings while I was a member of the committee.

Q. Now, if the record shows from the reports that are in evidence that a meeting was held during the period which you have testified you were a member, and you were not in attendance, what can you say about your knowledge as to what occurred?

A. Nothing.

Q. In other words, you have no knowledge, is that correct?

A. If I was not there, how could I?

Q. You have no knowledge?

A. How could I?

Mr. MacIntyre: All of these questions go to the answers given by this witness on direct, that to his knowl-

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edge this committee never took any actions on certain things. I just want to find out how much he knew about it.

Trial Examiner Norwood: Proceed.

Off the record.

4568 (There was a discussion off the record.)

Trial Examiner Norwood. On the record. Proceed.

By Mr. MacIntyre:

Q. Is it your testimony now, Mr. Tompkins, that you have knowledge of what the members of the conduit committee did in contacting and discussing matters with representatives of manufacturers of conduit after they left the meetings which you did attend? That is, in discussing the matters which were taken up at the meeting?

A. I have no knowledge of what anybody else did except myself.

Q. Have you seen lists of membership of the National Electrical Wholesalers Association?

A. Lists of membership?

Q. Yes.

A. Yes, there is a bulletin published every year, so I get a copy listing the members.

Q. Are you prepared to testify that conduit manufacturers did not receive copies of that list?

A. I do not know whether they did or not.

Q. Or who gave it to them?

A. I have no knowledge of the distribution of the lists at all. I simply received one copy.

Mr. MacIntyre: I believe that is all.

4570 LOUIS M. NICHOLS was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Austin.

Q. Your full name is in the record, is it?

A. It is.

Q. Will you tell us by whom you are employed?

A. By the General Electric Supply Corporation.

Q. And where is your place of business?

A. In the general office of that corporation in Bridgeport, Connecticut.

Q. What is your position?

A. Comptroller.

Q. How long have you occupied that position?

4571 A. Since October, 1929.

Q. Will you tell us what your employment experience was before that time, sir?

A. From the time I graduated from college I was employed by the Western Electric Company as sales statistician, and in the comptroller's department as an accountant, up to sometime in 1918. Then, after I was "demobbed" from the Army in 1919, I was director of commercial research for the International General Electric Company until sometime in 1923; I was chief assistant to the general merchandise manager of the General Electric Company, and director of commercial research; manager of the financial division of the Supply House Department of the General Electric Company until October, 1929, when I became comptroller of the General Electric Supply Corporation, which was a consolidation of the various distributing wholesalers in which the General Electric Company had financial control up to that date.

By Mr. Austin:

Q. Have you since you have been employed by General Electric Supply Corporation represented that company in N. E. W. A.?

A. I represented that company in N.E.W.A. since
4572 sometime, I believe, in 1933, as an alternate. The regular members are usually active district managers.

Q. Were you a member of N.E.W.A.'s operating cost committee, so-called?

A. Yes, sir.

Q. At what time were you appointed a member of that committee?

A. To the best of my recollection, sometime early in 1933, shortly after I became an alternate member of the Association.

Q. How long have you been on the operating cost committee?

A. Since that date.

Q. Does that committee have any sub-committees?

A. It has one sub-committee which is called the technical sub-committee.

Q. Have you been on that technical sub-committee?

A. I have served as chairman of the technical sub-committee.

Q. Were you chairman of the technical sub-committee at the time Respondents' Exhibit 272-O through Z-25 and Respondents' Exhibit 275 were prepared?

A. Yes, sir.

Q. What type of work did you as chairman of that technical sub-committee do in connection with the preparation of those exhibits?

A. Together with the other two members of the
4573 technical sub-committee, after we had been commissioned to carry out the cost study by the executive committee of the N.E.W.A., we explored the field of cost studies in the wholesaling business that had been made, various methods that had been pursued in making such studies, and after having explored that field, we prepared a questionnaire which was sent to members, on which they were asked to give certain figures with regard to their operations, which could be consolidated and used as a basis for operating cost studies, which we had been commissioned to prepare.

When those questionnaires were turned back into the office of the Association, which were unidentified in so far as the concerns which submitted the figures were concerned, and after they had been mechanically consolidated by the office staff of N.E.W.A., we then took those figures and applied the methods of distribution of expenses by commodities, according to the plan that we had decided to use, and when that study had been completed and reviewed also by the larger operating cost committee itself, and submitted to counsel, it was, at the following meeting of the Association, presented both to the executive committee, then to the membership and later published in the form in which it appears here.

4601 Trial Examiner Norwood: Thank you, Mr. Nichols.

(Witness excused.)

4602 (Whereupon, at 1:15 o'clock p. m., Thursday, January 15, 1942, the hearing in the above-entitled matter was adjourned.)

4605 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order. Pursuant to adjournment the hearing in Docket 4452 is now reconvened in the conference room, 29th Floor, 15 Broad Street, New York, New York, the 16th day of January, 1942, at nine-thirty o'clock a. m., Eastern Standard Time.

You may call your next witness.

WALTER WILLIAMSON was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

Direct Examination.

Trial Examiner Norwood: Proceed.

By Mr. Taylor:

Q. Mr. Williamson, I believe your full name is in the record?

A. That is right.

Q. You are employed by the Westinghouse Electric Supply Company, are you not?

A. Yes, sir.

Q. What position do you hold in that company?

A. Vice president.

Q. How long have you held that position?

A. About twelve years.

4606 Q. What territory comes within your jurisdiction as vice president?

A. All of the continental United States.

Q. Of the entire company?

A. That is right.

Q. Do all sales, including all sales of rigid steel conduit made by the Westinghouse Electric Supply Company come within your jurisdiction?

A. Yes, sir.

Q. Are you, from your position, familiar with the country-wide conditions of sales in your company?

A. Yes.

Q. Will you explain to us in what manner you are able to familiarize yourself with such conditions?

A. Why, in the regular performance of my duties I

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spend most of my time traveling around between our various houses and districts, of which we have 79 scattered around in the 48 states.

Q. Does the Westinghouse Electric Supply Company sell rigid steel conduit as agent for the manufacturer, or does it sell it for its own account?

A. Both.

Q. In connection with such sales as are made in the capacity of agent for the manufacturer has your company entered into consignment agency agreements with any
4607 manufacturers of conduit?

A. Yes, sir.

Q. Does your company enter into any such consignment agency agreements which are not brought to your attention?

A. Yes.

Q. In the course of the pursuance of your duties as vice president are such agreements as have been executed usually brought to your attention?

A. Usually, yes.

Q. Do the district managers have authority to execute such contracts?

A. Yes.

Q. By whom are such contracts usually executed?

A. By the district managers, or by one of the officers of the corporation.

Mr. Taylor: I did not get the answer.

Trial Examiner Norwood: Read the answer, Mr. Reporter.

(The answer referred to was read by the reporter.)

By Mr. Taylor:

Q. Well, as between the officers of the company and the district managers, by whom are such contracts usually executed?

A. By the district managers in the majority of cases.

Q. Was your company, to the best of your knowl-
4608 edge at any time after the execution of any such consignment agency agreements requested to alter the terms of such agreements, or to execute new agreements with any of the manufacturers with whom you had previously executed such agreements?

A. Not to my knowledge.

Mr. Taylor: Will you read the question and answer?

Trial Examiner Norwood: Read it, Mr. Reporter.

(The record was read by the reporter.)

By Mr. Taylor:

Q. Are you familiar with the fact that one or more manufacturers of conduit changed their consignment agency forms of agreement in the early part of 1937?

A. Yes, sir.

Q. Were you requested by any manufacturer to execute an agreement incorporating such change?

A. Yes, sir.

Q. By whom were you requested to execute such agreement?

A. As my memory serves me, only two—the Central Tube Company and the National Electric Products Company.

Q. Did you execute such agreements pursuant to that request?

A. No.

Q. Have you or your company, so far as you know,
4609 ever taken any action or refrained from taking any action for the purpose of effecting any alteration in the terms of, or maintaining the then existing form of such consignment agency contracts?

A. No.

Q. I refer by that to the contracts executed by your company at any time. Your answer comprehends that?

A. Yes, sir.

Q. Mr. Williamson, directing your attention to the sales of conduit made by your company for its own account, how did you purchase the conduit so sold by you?

A. In the regular manner, by the issuance of a purchase order on the manufacturer.

Q. Has there been any time during the course of the last ten years when you were unable to purchase conduit outright from the manufacturer?

A. Not that I know of.

Trial Examiner Norwood: During that time did you say that you had carried conduit on consignment?

The Witness: Yes, sir.

By Mr. Taylor:

Q. Based upon your experience with, and knowledge of the conduit sales of the Westinghouse Electric Supply Company, are you able to give us a reasonably accurate estimate of the amount of conduit sold by the Westing-
4610 house Electric Supply Company for it own account?

A. Do I understand you to be asking me for the

total amount of conduit we have sold for our own account in a period of ten years?

Q. I do not want you to understand my question to call for figures. I mean a very rough estimate; like a very small proportion was sold for your account, a substantial portion, a large proportion, or an infinitestimal portion. I will limit the question from January, 1936, to January 25, 1941.

A. I would say a substantial portion.

Q. When selling conduit for your own account do you quote the customer f.o.b. your warehouse, or do you quote a delivered price?

A. Both.

Q. In the cases in which you quote a delivered price what is your reason for employing this method of quoting?

A. Because the customer requests a quotation on a delivered price basis.

Q. Are you able to give us a reasonably accurate estimate of the amount of conduit sold by your company on a delivered price basis?

A. I think so.

Q. What would your estimate be?

A. I would say about 75 per cent of it.

4611 Q. What use, if any, do you make of freight adder books in connection with your conduit business?

A. We use them all the time.

Trial Examiner Norwood: How?

The Witness: In calculating the transportation costs.

By Mr. Taylor:

Q. From what source do you secure such books?

A. From the manufacturers.

Q. Is any charge made to you for such books?

A. No.

Q. Do you know whether or not price sheets issued by conduit manufacturers show the price of conduit to the jobber, as well as to the ultimate consumer?

A. Yes, they do ordinarily.

Q. Can you give us a reasonably accurate estimate of the amount of conduit handled by your company for which the manufacturer received the card price to the jobber, from you, between January 1, 1936, and January 25, 1941?

Mr. MacIntyre: I object to the question. There has been

no foundation laid to show that this man is in a position to testify on that.

Trial Examiner Norwood: He was asked if he could do that. Let him answer that question.

Mr. Taylor: Can you give us an estimate?

4612 Trial Examiner Norwood: Can you give us an estimate?

The Witness: I think so, yes, sir; about 50 per cent.

By Mr. Taylor:

Q. Are you familiar with the basing point method of figuring delivered prices?

A. Yes, sir.

Q. Do you, or your company, so far as you know, have any interest in either the maintenance of, or the disestablishment of such method?

A. No.

Q. Have you, or your company, so far as you know, ever taken any action or refrained from taking any action for the purpose of either maintaining or disestablishing the basing point method?

4613 The Witness: No, sir.

By Mr. Taylor:

Q. Mr. Williamson, in connection with the freight adders concerning which I inquired of you previously, have you or your company, so far as you know, ever taken any action or refrained from taking any action—

A. No.

Trial Examiner Norwood: Wait a minute.

By Mr. Taylor:

Q. (Continuing):—for the purpose of either altering the then form of, or designating a particular form of such freight adders?

A. No.

4614 Q. With reference to your source of supply of such freight adders, have you, or your company, so far as you know, ever taken any action or refrained from taking any action for the purpose of determining such source of supply?

A. No.

Q. Mr. Williamson, in connection with specific building jobs do you usually employ a written form of contract covering the purchase and sale by you of the conduit for such specific building jobs?

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A. Yes.

Q. Who, or what, determines what form of specific job contract you employ in any given instance?

A. The manufacturers.

Q. Have you, or your company, so far as you know, ever taken any action or refrained from taking any action for the purpose of effecting any alteration in the terms of, or maintaining the then existing form of such specific building job contracts?

A. No.

Q. Have you, or your company, so far as you know, ever conducted or instituted an investigation of any specific building job contracts?

A. No.

Q. Mr. Williamson, has your company prepared a
4615 detailed study of all its sales of conduit made on or off the card prices current at the date of such sales, during the period from January 1, 1936, through January 25, 1941?

A. No.

Q. Were you ever requested by counsel to make such a study?

A. Yes, I believe we were.

Q. Why was such a study not made?

A. Because of the terrific amount of work involved; the time and labor necessary.

Q. Do you have any idea of the time it would require to make such a study?

A. I would hazard a guess that it would probably take six months, with two or three people on the job.

Q. Are you familiar with the on and off card sales made by your company for that period of time?

A. Yes.

Q. Can you give us a fairly accurate estimate as to the portion of sales made by your company which were off the then current card during the period from January 1, 1936, through January 25, 1941?

A. I should say 85 to 90 per cent.

Mr. MacIntyre: Now, I move that the answer be stricken. It is not responsive to the question. I would have objected to the question if it had called for this answer, be-
4616 cause there has been no foundation laid to show that the witness can give the answer, as competent, which has been given. I ask that the question and the answer be read.

Trial Examiner Norwood: You may cross-examine him on that. I will deny the motion.

Mr. MacIntyre: May I have the answer?

Trial Examiner Norwood: Read the answer, Mr. Reporter.

(The answer referred to was read by the reporter.)

Trial Examiner Norwood: You mean 85 to 90 per cent is your estimate of the off card sales?

The Witness: Yes, sir.

Mr. MacIntyre: I cannot get the period of time involved.

Trial Examiner Norwood: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

By Mr. Taylor:

Q. Mr. Williamson, who determines the price or prices at which conduit is sold by your company?

A. Our local district management.

Q. Do such district managers have the authority to
4617 determine both the price quoted and the price policy relating to rigid steel conduit sold in their districts?

A. Yes, sir.

Q. Do they receive any instructions from you, or from any other official of your company relative to the price policy, or the prices quoted?

A. No.

Mr. Taylor: That is all I have, Your Honor.

Trial Examiner Norwood: Cross-examine.

Cross-Examination by Mr. MacIntyre.

Q. Mr. Williamson, you have given us a percentage here in one of your last answers, of the total number of sales made by your company on and off card. Do you mean by that answer that you gave that that percentage of your sales was taken from an average over the period of time indicated, and were off card by virtue of your thought that they were not in accordance with the suggested resale prices as put out by the manufacturers on their cards?

A. Yes.

Q. That being an average then of all sales over the period, it is your thought that the percentage of
4618 your on card sales was greater at some period of

time than at others during that five year period, than is indicated by the percentage you gave, is that correct?

A. That might be possible, yes, sir.

Q. If what you have given is your thought as to an average figure, it must be possible, and it must be a fact that some periods entail a greater percentage of sales on cards than others, is that not true?

A. That is correct; yes, sir.

Q. Are you able now to give us more information by specifying the periods within which the fluctuations ran to their greatest percentage of your sales on card, and the length of the period involved, and the greatest amount of the percentage in that direction involved?

A. I am not in a position to do so, no, sir.

Trial Examiner Norwood: Do these figures come over your desk?

The Witness: What?

Trial Examiner Norwood: These sales figures?

The Witness: Oh, no.

Trial Examiner Norwood: Do you ever check them with the card at all?

The Witness: Oh, no; the sales are made out in our districts scattered around the country. My knowledge of what is going on in those conduit sales comes from
4619 my traveling around and discussing the general situation with our district management.

By Mr. MacIntyre:

Q. And whatever thought you have expressed here this morning concerning these percentages figures is based upon what they told you during the course of these discussions?

A. Yes, sir, and my general knowledge of the situation.

Q. You never otherwise verified it?

A. Not by research and investigation, a check of tickets and transactions.

Q. Have you ever made a check of any records in your office for the purpose of determining by way of a weighted average as to the total number of feet of conduit involved that your quotations to customers were on card or off card?

A. Casual checks at various points around the districts over a period of time.

Trial Examiner Norwood: Do not answer some other question, answer this question.

Mr. MacIntyre: Read it.

4620 Trial Examiner Norwood: Read the question, Mr. Reporter.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Have you ever made?

The Witness: No.

By Mr. MacIntyre:

Q. You do know that your company has made price quotations to the Federal Government in its submission of bids under seal, in accordance with card prices, do you?

A. Yes, sir.

Q. Can you tell us how many times, and on what quantities of conduit that such quotations have been made?

A. No.

Q. You have told Mr. Taylor that you are acquainted with published price cards of conduit manufacturers. You have seen them regularly. Do you recall that testimony?

A. Yes.

Q. Have you ever seen one as published by any conduit manufacturer during your entire experience in the conduit industry which provided for prices F.O.B. mill, without the use of any adder books, or freight rate factors in connection therewith?

Mr. Taylor: If Your Honor, please, I object to that question as outside of the purview of the direct ex-

4621 amination. Mr. Williamson was only asked one question, and that was, whether there was a price to the jobber shown on the card. He was not asked anything about retail prices.

Mr. MacIntyre: He was asking about the retail prices as well as the prices which he paid.

Trial Examiner Norwood: He asked him if he sold F.O.B. That question has been asked under direct. I think it goes to that.

Mr. Taylor: I said F.O.B. his warehouse, not the factory.

Trial Examiner Norwood: Objection overruled.

Read the question.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: You may answer.

The Witness: Not that I recall.

By Mr. MacIntyre:

Q. You have told him about your use of the freight adder books, and in that connection you told him that you used them in calculating transportation costs.

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Is it not a fact that your use of them in that direction is to determine the so-called transportation factor which you add to the basing point price in the tabulation of the delivered price, as provided for in the price cards of the manufacturer?

4622 A. Yes, sir.

Q. And that is what you meant when you answered Mr. Taylor's question, is it not?

A. Yes, sir.

Q. How long have you been familiar with the use of the basing point system in the conduit industry?

A. Ever since it was established, which was back, if my memory recalls, to 1912, '13.

Q. Do you recall anything about the use of an F.O.B. mill system of quoting prior to that time?

A. Yes, sir.

Mr. MacIntyre: I did not understand that.

The Witness: Yes.

Trial Examiner Norwood: He said "Yes."

By Mr. MacIntyre:

Q. Do you know any of the reasons as to why the manufacturers shifted from the F.O.B. mill system to the basing point system?

A. No.

Mr. Taylor: I object to the question. He is asking what the manufacturer's reasons were.

Trial Examiner Norwood: Well, he said, "No."

By Mr. MacIntyre:

Q. To you as a wholesaler engaged in the resale of conduit for profit, it does not matter whether you

4623 use the basing point system or not, does it?

A. Not particularly, no.

Q. Do you consider that you could compete just as well with other wholesalers, without using it?

A. Just as poorly, perhaps.

Q. I am asking you if you feel that you could compete just as well without using it?

A. I guess so.

Q. Why do you use it?

A. Because it is the established practice in the industry.

Q. You use it because the manufacturers use it and because other wholesalers use it, then, is that correct?

A. Yes, sir.

Q. In response to a question that Mr. Taylor put to you, you told him that approximately fifty percent of your purchases from manufacturers—that is, conduit manufacturers—were made at off their card prices to you?

Is the basis for that information and that statement by you the same as the basis which you used in expressing your thought as to what percentage of sales are made off card by your company?

A. The same basis, yes, sir.

Q. You have nothing whatever upon which to base that last answer?

A. No, sir.

4624 Q. Have your seventy-nine district sales managers reported to you the details of what took place at all of the meetings which they attended with representatives of other wholesalers of conduit, and representatives of manufacturers of conduit?

Mr. Taylor: I object to that.

I would like to have the question read. Possibly I misunderstood it.

Trial Examiner Norwood: Read the question, Mr. Reporter.

(The question referred to was read by the Reporter.)

Mr. Taylor: I submit, by way of support of my objection, that that is wholly outside of the scope of the direct examination. Our testimony on direct has been exclusively limited to our company.

Trial Examiner Norwood: You asked him to make certain denials there concerning his knowledge, and I think that is going to that.

Objection overruled.

The Witness: Our thirteen district managers not seventy-nine.

Mr. MacIntyre: I thought you said seventy-nine.

Trial Examiner Norwood: Answer the question with respect to the thirteen.

The Witness: No.

4625 Mr. MacIntyre: Answer it with respect to the thirteen.

The Witness: No.

By Mr. MacIntyre:

Q. On direct examination you told Mr. Taylor that you were familiar with what was going on in the industry—

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that is, in the sale of conduit—and had been for a great number of years.

Will you please tell us what percentage of the total sales of conduit made by wholesalers in the United States during the years 1933 and 1937 were made by Westinghouse Electric Supply Company?

4626 The Witness: I do not know.

By Mr. MacIntyre:

Q. In all of your travels around the country and in your discussions with all of your district managers, 4627 and the other experience that you picked up in connection with your company, you never ascertained that fact?

A. No.

Q. On these outright purchases of conduit which you made from manufacturers, and which were not made under any contract, but upon open orders, will you please explain, for the record, the manner in which you handled those?

A. Negotiated between our district managers and the local representatives of the conduit manufacturers on a straight purchase and sale basis.

Q. Do you know the details of the manner in which that was handled?

A. No.

Q. Did you ever handle one of them yourself?

A. Back in days gone by, yes, sir.

Q. What was your method?

A. Negotiating a price for a quantity with a representative of a conduit manufacturer, and placing an order on that basis.

Q. What about the regular quantities for stocking, how do you handle that, carload?

A. Bought in carloads.

Q. Tell us what passed between you and the manufacturer when you wrote him telling him to ship your carload?

Mr. Taylor: I object to the assumption of the 4628 question, that he wrote the manufacturer.

Mr. MacIntyre: If the witness is now able to state that he never did write the manufacturer about it, of course I will withdraw the question.

Trial Examiner Norwood: Overruled.

The Witness: I never did.

By Mr. MacIntyre:

Q. You never did write the manufacturer asking him to ship you a carload of conduit?

A. It is not necessary. It is a negotiation in the local area between the representative of the organization and the manufacturer. They are not questions of correspondence between our branches and the mill headquarters.

Trial Examiner Norwood: They received some sort of an order from you?

The Witness: Our local representative will give the manufacturer an order.

Trial Examiner Norwood: He will order it either for an outright purchase by you, or for consignment?

The Witness: That is correct, sir.

By Mr. MacIntyre:

Q. Do you know what was specified on these outright purchase orders?

A. No.

Q. You do not even know as to those you handled
4629 yourself, then?

A. I don't handle any myself now, counsellor.

Q. When you did handle them. You cannot tell us what was on the purchase orders that you submitted?

A. No, sir; that was many years ago.

Mr. MacIntyre: I believe that is all.

Trial Examiner Norwood: Any redirect examination?

Mr. Taylor: No redirect.

Trial Examiner Norwood: Thank you.

(Witness excused.)

Call your next witness.

GEORGE E. CLIFFORD, was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

Direct Examination.

Trial Examiner Norwood: Proceed.

By Mr. McDaniels:

4630 Q. Mr. Clifford, what is your position?

A. I am vice president in charge of sales of Spang Chalfant, Incorporated.

Q. How long have you held that position?

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A. Since August, 1940—1939.

Q. Will you tell us the circumstances under which Spang Chalfant bought certain assets of the Central Tube Company?

A. The Central Tube Company had been a prominent company in the pipe business for many years. They had occasion to finally liquidate their business, and an opportunity was presented to us to purchase the business. We were interested to purchase because we were weak in what we call plumbing supply jobbers, and that was their forte. They had built up a very attractive distribution among the plumbing supply jobbing trade, whereas Spang in that end of our business had more or less specialized in what we call mill supply jobbing houses, and it was an opportunity to quickly materially increase our standard pipe distribution through acquisition of fine plumbing supply jobbers.

4631 Q. About what time did you make that purchase, if you recall?

A. I believe it was in February, 1940.

Q. After that, did you begin to operate some of the Central Tube facilities?

A. Yes, we did, we started right in.

Q. In doing that, what did you do, if anything, with reference to rigid steel conduit, the rigid steel conduit part of the Central Tube business?

A. Well, we were in the business of manufacturing pipe, and as we took over this company we naturally were interested in continuing any part of their business which would give us more pipe business, so after looking it over we decided to continue with that end of the business, because it was an outlet for our pipe of our own manufacture.

Q. Had you been in the conduit business before?

A. No.

Q. Had you been in any kind of electrical business before that?

A. No, sir.

Q. What did you do with reference to the methods of carrying on the conduit business?

A. Well, we had certain men in the field, we determined what the practices were, talking to these men, or jobbers, and finally set up and started to follow the business

4632 along those lines.

Q. That is, along the lines of the prevailing prac-

tices in the business. Have you heard of the Rigid Steel Conduit Association?

A. Yes, sir, I have heard of it.

Q. Do you know anything about it?

A. No, sir.

Q. Was Spang Chalfant ever a member of the Association?

A. No, sir.

Q. Do you recall an occasion when a representative of Spang attended a meeting of the Association in April, 1940?

A. I believe there was a meeting held at that time—about that time—at which one of our men attended. It is my recollection that that meeting was one where the so-called Association was dissolved, and, yes, our man attended that, I believe more then as an observer, and possibly to advertise our name in the business a little bit.

Q. Did Spang Chalfant, as far as you know, ever make any agreement, or understanding, with any other manufacturers in the business, to use the basing point system?

Mr. MacIntyre: I object. There has been no foundation laid to show that this man knows what all of the representatives of Spang Chalfant did, which might be looked to as evidence in determining whether it led in the

4633 direction of an agreement on that point.

Mr. MacIntyre: Can we have the question read?

Trial Examiner Norwood: Read the question, Mr. Reporter.

The question is a little too broad, I believe.

(The question referred to was read by the reporter.)

Trial Examiner Norwood: I think that is qualified sufficiently.

Objection overruled.

The Witness: No.

By Mr. McDaniel:

Q. As far as you know, did Spang Chalfant ever make any agreement or understanding with any of its competitors about prices, or the method of quoting prices?

A. No, sir.

Q. As far as you know, has Spang Chalfant ever felt any sense of obligation toward any company, or any individual, to use the basing point system of quoting prices?

A. No, sir.

Mr. MacIntyre: Object to that, on the same ground.

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4634 Trial Examiner Norwood: Objection sustained.

I think he had better speak for himself about that. You can ask him about conditions which would indicate the presence of any coercion or obligation. You are asking him how the whole company feels about it.

I will sustain the objection. Delete the answer.

Mr. McDaniel: I will reframe the question this way:

By Mr. McDaniel:

Q. Have you personally, Mr. Clifford, or, so far as you know, has Spang Chalfant ever felt under any obligation to any one else to use or to continue to use the basing point system of prices?

A. No, sir.

Q. Have you ever had an agreement with any one else to adopt, or to use uniform price cards?

A. No, sir.

Q. So far as you know has Spang Chalfant ever had such an agreement or understanding?

A. No, sir.

Q. Have you, or to your knowledge, any one else
4635 on behalf of Spang Chalfant had an agreement or understanding to adhere to the prices appearing on the cards which you issued?

The Witness: Would you say that again?

Trial Examiner Norwood: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: No, sir.

By Mr. McDaniel:

Q. Did you, or anyone else on behalf of Spang Chalfant, as far as you know, ever agree with any of the other manufacturers of conduit to issue freight rate bulletins or delivery charge booklets for use in quoting prices on rigid steel conduit?

A. No, sir.

Q. Did you, or anyone else on behalf of Spang Chalfant, as far as you know, have any agreement or understanding with any other conduit manufacturers to use, or to continue to use the Donnelly freight rate bulletins?

A. No, sir.

Q. Did you, or anyone else, as far as you know, on behalf of Spang Chalfant, have any agreement or understand-

ing with any other manufacturers to use any particular kind of consigned stock agreement?

4636 A. No, sir.

Q. Have you, or to your knowledge, anyone else on behalf of Spang Chalfant ever agreed with any other manufacturers of conduit to adopt and use any uniform discounts or other forms of compensation to be allowed to distributors, or jobbers, or agents?

A. No, sir.

Q. Have you, or anyone else, so far as you know, on behalf of Spang Chalfant, ever agreed with any other person to be bound by any particular list of recognized jobbers or dealers in conduit?

A. No, sir.

Q. Do you know why the price cards of Spang Chalfant use a Chicago basing point?

A. Well, we followed the practice of quoting delivered prices.

You must be competitive, if you are going to get an order. We couldn't hope to sell at a higher price than our competitor, and we would quite naturally have to follow that price if we expected to be competitive in that area.

Q. Now, I have asked you a number of questions about whether you or anyone else you know of, on behalf of Spang Chalfant, have had any agreements with other manufacturers.

4637 I would like to ask you if your answers are the same with reference to any wholesalers, or jobbers, or any one to—

A. (Interposing.) They are the same.

Mr. McDaniel: That is all.

Trial Examiner Norwood: Cross examine.

Cross-Examination by Mr. MacIntyre.

Q. You stated that so far as you know your company uses the Chicago basing point in order to be competitive in that area. Do you recall that testimony?

A. Yes, sir.

Q. What do you mean by that term "be competitive in that area"?

A. I mean that if you are quoting a price, and you are competing with other people for that business, you must quote at least—I am assuming that no one would pay you

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more for your product than they would someone else—you must be competitive on prices if you hope to get the business.

Q. You mean, then, the matter of quoting no higher price than your competitors?

A. Yes; you cannot quote a higher price if you expect to get the order.

Q. Do you also mean by that quoting no lower
4638 price than your competitor?

A. No, sir.

Q. Do you instruct Mr. Morrow and the other representatives of your company to quote lower prices than your competitors in the Chicago area?

A. No, sir.

Q. Why do you not do that?

A. We are in business to make money.

Q. You then instruct him not to make them higher, and not to make them lower. Is that correct?

A. We try to be competitive.

Trial Examiner Norwood: He asked you about your instructions there.

Do you, or do you not?

The Witness: Do I, or do I not what?

Mr. MacIntyre: Please read the question.

Trial Examiner Norwood: Read the question.

(The question referred to was read by the reporter.)

The Witness: Well, we try to obtain as high a price as we can for our product, and we would not like to take any less for our product than a going good price is for the material.

By Mr. MacIntyre:

Q. And you instruct him to quote no lower than
4639 competitors are quoting generally in that area, is that correct?

A. Yes, that is correct.

Q. If you matched the prices of your competitors in a particular area what do you depend upon then, as incentive—that is for developing an incentive on the part of your customers to buy your merchandise over the merchandise of the same type of your competitors?

A. We depend upon our service, quality and treatment to be able to obtain an order at a fair price.

Q. You consider your quality is better than that of your competitors?

A. We do. It is very difficult to convince people to that effect at times. We at least maintain it is the equal, if not better.

Q. You do not feel that you have been able to convince anyone that your quality is better than your competitors?

A. Well, certainly some of them feel that it is; otherwise, they would not purchase the material.

Q. You depend upon that for them to buy your merchandise rather than buy your competitors' merchandise in those instances where you match the prices or price quotations of your competitors, is that correct?

A. Quality, service and treatment.

Q. What difference in service have you found that
4640 you are able to give purchasers of conduit in the Chicago area over and above service that you have found competitors who operate in that area such as the Clayton Mark, the W. B. Austin Company, the LaClede Tube Company, the LaClede Steel Company, and Youngstown Sheet and Tube Company, give to their customers?

4641 A. I do not think we could say that our service is superior than that supplied by those companies. We offer good service, prompt shipment; it is only a matter of a short run over there from where we make our material. If that is what you mean by service.

Q. You do not think the service, then, that you offer is any different, or substantially or essentially any different than the service of your competitors in that area?

A. Well, it is at least as good, possibly better.

Trial Examiner Norwood: Your salesmen tell them it is far superior, do they not?

The Witness: We naturally do that.

Some people you sell that idea to, and sometimes you cannot because somebody else has sold it to them before.

By Mr. MacIntyre:

Q. You depend upon statements of that kind to your customers in order to get your business where you match your prices with your competitors, is that correct?

A. That is partially true.

Q. Is that not a fact?

A. We depend upon that?

Mr. MacIntyre: Please read the question.

(The question referred to was read by the Reporter.)

The Witness. Yes, I think that is correct.

4642 By Mr. MacIntyre:

Q. You have told Mr. McDaniel that you are vice president in charge of sales.

Does that mean all sales of all commodities which are handled by the Spang Chalfant Company?

A. That is right.

Q. Who is more particularly concerned with conduit sales of the Spang Chalfant Company than you are?

A. Today, you mean?

Q. Since Spang took over handling conduit?

A. Today Mr. Morrow is more particularly; he handles that business.

Q. Has he been so more particularly concerned with conduit handled by the Spang Company since Spang took over the conduit business of the Central Tube Company?

A. Since he has been in the employ of Spang, yes, sir.

Q. And this has been ever since you took over the conduit business of the Central Tube Company, has it not?

A. No, sir.

Q. What interval of time elapsed between the time that you took over the conduit business of the Central Tube Company and the time that Mr. Morrow became more particularly concerned with the conduit sales of Spang Chalfant, Incorporated, than you have been?

A. Mr. Morrow has been with the company thir-
4643 teen months, I believe, and we took over the Central Tube Company in February, 1940.

Q. About ten or eleven months, then, that you handled conduit before Mr. Morrow came into your company?

A. That is right.

Q. And who during that period of time was more particularly concerned with the handling of conduit in the Spang Company than you were?

A. Mr. Dufort.

Q. What are his initials?

A. Arthur is his first name. I do not recall his middle initial.

Q. And you took him over with the other assets of the Central Tube Company in 1939, is that correct?

A. That is right.

Q. He had previously been an associate of Mr. Morrow in that company, had he not?

A. That is right.

Q. Are you prepared to testify at this time concerning

all of the conversations and commitments which Mr. Dufort made with other manufacturers of conduit during the entire experience of his in the conduit industry?

Mr. Welch: Your Honor, I object to that, because it assumes the word "commitment" there. There is nothing in the record to show that Mr. Dufort made any commitments.

4644 I do not think he is therefore qualified to answer this question, and I object to it.

Mr. McDaniel: I join in the objection.

Trial Examiner Norwood: It assumes "commitments" there.

Mr. MacIntyre: I will change that.

By Mr. MacIntyre:

Q. Are you now prepared to testify, Mr. Clifford, as to whether Mr. Dufort had any conversations with other manufacturers of conduit than Central Tube Company and Spang Chalfant Company, Incorporated, and made commitments with them, or to them, concerning the use of basing point system, price quotations, methods of making price quotations, the use of freight rate factors in determining delivered price quotations, the use of consigned stock agreement forms, and other sales practices?

A. Mr. Dufort couldn't have made any such commitments as you outlined without consulting me. I therefore would say that to the best of my knowledge, there were no such arrangements or commitments made.

Q. I am asking you if you are prepared now to testify, without reservation, that he did not make commitments with anyone on those matters during the time that he was with the Central Tube Company and with the Spang Chalfant Company?

A. I think I can say so, say yes to that, because
4645 if he did he would be doing so without my knowledge, as I was responsible for the sales of the company—

Trial Examiner Norwood: He is asking you whether he could have done so without your knowledge?

The Witness: No, he could not have done so.

By Mr. MacIntyre:

Q. Why do you say that he could not have talked to the manufacturers about those things without your knowledge?

A. He had no authority to do so; he certainly would

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not have done so without consulting me. After all, I was in charge and responsible for the sales of the company and the policies of the company.

Q. And you were in charge of Mr. Dufort at the time that he was with the Central Tube Company also?

A. No, sir.

Q. And do you know anything that he did in contacting manufacturers and discussing those practices with them at the time that he was with the Central Tube Company?

A. I have no knowledge of his activities before he came to our company.

Q. You do not know how many commitments he might have made, if any, with manufacturers at that time?

A. No.

Q. And you do not know how many, if any, he made with manufacturers which he rescinded by writing
4646 them and telling that they were no longer in effect when he came with the Spang Chalfant Company?

Mr. Welch: I object to that.

There is nothing in the record to show that Mr. Dufort ever either rescinded or made any agreements.

Trial Examiner Norwood: I think you might substitute "that he might have rescinded", if you want to put that descriptive clause in.

I will sustain the objection to the form of the question. Go ahead.

By Mr. MacIntyre:

Q. Do you know of any action on the part of Mr. Dufort when he came with the Spang Chalfant Company to handle its conduit sales, through which he wrote or otherwise communicated with any representative of any manufacturer and rescinded any commitment which he might have had with them prior to that time?

Mr. McDaniel: Your Honor, I object to that.

There is no evidence that I know of in the record that would coincide with what Mr. MacIntyre is suggesting to the witness.

Trial Examiner Norwood: He is asking if he would know about it, if he had done that.

Mr. McDaniel: I think we are wasting time trying
4647 to find that out from this man. It is a question of badgering the witness to try to ask him something about which there is no evidence in the record.

Trial Examiner Norwood: Objection overruled.

The Witness: Read the question.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: I know of no such action.

Trial Examiner Norwood: And you know of no such commitments?

The Witness: No, sir, I do not.

By Mr. MacIntyre:

Q. Can you at this time specify and describe for us any differences in the practices which were used by the Central Tube Company from the practices which were used immediately thereafter by the Spang Chalfant Company in its sale and marketing of rigid steel conduit?

A. No, sir.

Mr. MacIntyre: I believe that is all.

Trial Examiner Norwood: Have you any redirect?

Mr. McDaniel: Will you excuse me just a minute?

Trial Examiner Norwood: Certainly.

4648 *Redirect Examination by Mr. McDaniel.*

Q. Mr. Clifford, do you know in what ways the consigned stock agreement forms of Spang Chalfant differ from the consigned stock agreement form used by Central Tube Company?

Mr. MacIntyre: I object to the question.

The agreement of the Spang Chalfant Company is in evidence, and so, I believe, is that of the Central Tube Company. They would show what differences there are, if any.

Trial Examiner Norwood: I think it would be a matter of convenience here for him to point that out, subject to being verified. If it should not be correct, it could be verified.

Objection overruled.

The Witness: Our Spang Chalfant contracts were changed. I feel that they are a much more favorable contract to ourselves—that is, not more favorable, but more fair. It is a different contract. We made some changes in it, because we did not think that it was fair to our rights.

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Trial Examiner Norwood: Some substantial changes there in essential features, you mean?

The Witness: Yes, sir.

Trial Examiner Norwood: What?

The Witness: Well, I think for one thing, that—
4649 we have two contracts, I am trying to picture the two in my mind. We have a standard pipe contract, we also have a conduit contract; they are different. I believe we made some changes, offhand I couldn't recall just what they were. They were changes that were made because we thought from a business point of view they were not good. It was not a good contract for our company?

By Mr. McDaniel:

Q. Were the changes made by your lawyers?

A. I believe so.

Q. And the conduit contract, as I understand your testimony, is different from the conduit contract which the Central Tube Company used?

A. That is correct.

Q. Now, there was one question on your cross-examination which had to do with actions of Mr. Dufort on behalf of Central Tube Company. I think you did not catch that name in the question, because you later testified that you know nothing of what Mr. Dufort did while he was with Central Tube, is that correct?

A. That is correct.

4650 Q. And you did not mean to testify that he was responsible to you while he was working for Central Tube Company?

A. Well, I certainly did not mean to say that, if I did. I certainly had nothing whatever to do with him before he came to our company.

Mr. McDaniel: I believe that is all.

Trial Examiner Norwood: Have you anything further?

Recross Examination by Mr. MacIntyre.

Q. Mr. Clifford, do you know of any differences in your consigned stock agreement which your company uses or has used since it started handling Central Tube Company's conduit, from the provisions contained in the consigned stock contracts of its competitors?

A. I have never seen a contract of a competitor.

Q. You do not know whether they are the same, then, or different, do you?

A. No, I do not.

Q. Why did you employ Mr. Dufort to handle your conduit sales?

Mr. McDaniel: I object to that question, because Mr. Dufort is not a respondent in the case. He is no longer employed by Spang Chalfant, Incorporated. What materiality the question has is quite beyond me.

Trial Examiner Norwood: Objection overruled.

4651 Mr. Gilpatric: It is not proper cross-examination. There is nothing in Mr. McDaniel's redirect that calls for that.

Mr. McDaniel asked him about the responsibility of Mr. Dufort at one time as against the other on direct.

Trial Examiner Norwood: I think counsel is right on that. Objection overruled.

The Witness: What is the question?

Trial Examiner Norwood: Read the question, Mr. Reporter.

(The question referred to was read by reporter.)

The Witness: For the reason we knew nothing whatever about the business. He came over as a man who had been in the business and was regarded as a good salesman. I guess that is the reason.

By Mr. MacIntyre:

Q. You employed him, then, because of his knowledge of the business—that is of the conduit business—and the making of sales of conduit, and the practices used in the industry, is that correct?

A. Yes, sir.

Mr. MacIntyre: That is all.

Mr. Robison: May I ask the witness a question, too, Mr. Examiner?

4652 Trial Examiner Norwood: Yes.

Redirect Examination by Mr. Robison.

Q. Mr. Clifford, you mentioned service, quality and treatment as elements of sales talk in the sale of conduit. It is not clear to me what you included in the term "treatment". Will you tell us?

Mr. MacIntyre: I object. I did not go into anything of that nature on recross examination.

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Trial Examiner Norwood: I think counsel may have this answer.

Objection overruled.

You may answer.

The Witness: What do I mean by "treatment"?

Trial Examiner Norwood: Yes.

The Witness: If you go into a store and the people are courteous and considerate, the same reason would apply at one store as against another. The people treat you all right and are concerned with pleasing you, and so forth. The same is true in anything else that you personally want to buy. I think that is treatment.

By Mr. Robison:

Q. Do you have claims for adjustment for defective material?

Mr. MacIntyre: I object to the leading of the 4653 witness in that manner.

Trial Examiner Norwood: Objection overruled.

Let him answer.

The Witness: Yes, we do.

By Mr. Robison:

Q. I wondered whether you were including the handling of such claims within your term of "treatment"?

A. That would come in, yes, sir.

Mr. Robison: That is all.

Mr. McDaniel: I have one more question.

Trial Examiner Norwood: Go ahead with this one question.

By Mr. McDaniel:

Q. Did you, when you hired Mr. Dufort—would a person of equal skill in the business from another company have satisfied your purposes just as well?

A. Yes, sir.

Trial Examiner Norwood: Thank you, Mr. Clifford?

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. McDaniel: Mr. Morrow.

HARRY G. MORROW resumed the stand and testified further as follows:

Trial Examiner Norwood: Mr. Morrow has been
4654 previously sworn in the case.

Direct Examination (Continued) by Mr. McDaniel.

Q. Mr. Morrow, when did you terminate your connection with Central Tube Company?

A. Practically on April 1, 1940; officially on July 1st.

Q. When did you begin your employment with Spang Chalfant, Inc.?

A. October, 1940.

Q. Did you have any business connection in the interval?

A. None.

Q. You had no connection whatever with Spang Chalfant, Inc., in between those two dates?

A. None whatever.

Q. Was Spang Chalfant, so far as you know, ever a member of the Rigid Steel Conduit Association?

A. They were not.

Q. What was the status of the Association at the time that Central Tube Company sold out to Spang Chalfant, Inc.?

A. At that time the Association was in the process of busting up.

Q. Has Central Tube Company manufactured or sold any conduit since February of 1940?

A. No, sir.

Q. Is the corporation any longer in existence?

4655 A. It is not in existence.

Q. Do you know of any plan for its being revived?

A. There is none.

Q. In 1933 you were with Central Tube Company, I believe you testified before?

A. That is correct.

Q. And in your capacity with Central Tube Company I believe you testified you had supervision over the issuance of price cards?

A. That is correct.

Q. Do you recall the occasion when price card number

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69, which was dated July 15, 1933, was issued raising the price of conduit nine dollars a ton?

A. I do.

Q. Do you recall the facts that accounted for that price rise?

Mr. MacIntyre: I object, unless it is shown that Central Tube Company in general and this man in particular was responsible for the rise and initiated it.

Trial Examiner Norwood: He may state any circumstances attending or preceding that price rise.

I think the question is unfortunately worded there. It is asking for a conclusion. You may show any facts attending that price rise from which the Commission may conclude what are the facts.

4656 Objection sustained to the form of the question.

By Mr. McDaniel:

Q. What were the facts with regard to the prices of conduit about that time?

A. At that time we were going into the steel code. The price of standard pipe—merchant pipe, which goes into conduit—had advanced, and that is the reason for the advance from card 69.

Q. Do you recall when card 70 was issued? It was dated July 20, 1934.

A. Yes, sir.

Q. What was the situation in the conduit business around that time?

A. The same answer applies. There had been again an increase in the price of merchant pipe, standard pipe, and conduit follows.

Q. Now, take card 74, which was dated November 17, 1936, do you remember that occasion?

A. Yes, sir.

Q. What was the situation at that time with reference to the prices?

A. At that time various raw materials, zinc, cordage, and everything that entered into the manufacture of conduit, had been advanced.

Q. Do you remember card 76, which was dated March 8, 1937?

4657 A. I do.

Q. What was the situation in the conduit prices at that time?

A. There was a very substantial increase in labor rates at that time, and it resulted in an increase in standard pipe of $9.50 a ton.

Q. Do you remember when card 80 was issued around in December, 1938?

A. Yes, sir.

Q. What was the situation at that time?

A. Well, card 80 really was getting back practically what had been lost on card 79, through reduction.

Q. It was a restoration of a reduction?

A. It was a restoration of a reduction.

Q. Do you recall the issuance of card 81, which was put out around October, 1939?

A. I do.

Q. Do you remember who put that out? Who initiated it?

A. Enameled Metals Company issued that card. They advanced both black and galvanized conduit. Central, however, advanced only the galvanized conduit. We did not advance the black.

Q. In 1940, after October, you were with Spang Chalfant, Inc.

A. That is correct.

Q. Did you have anything to do with the issuance of Spang Chalfant's card No. 83 in November, 1940?

4658 A. I did.

Q. What was the situation at that time?

A. Walker Bros. at that time issued a card. We reviewed the circumstances and made an analysis of costs, and we thought the advance was justified, and followed suit.

Q. What card is Spang Chalfant operating under at the present time?

A. Card 84.

Q. When was it issued?

A. In January, 1941.

Q. What was the situation at that time?

A. Generally increased costs of labor, zinc, and other raw materials entering into the manufacture of conduit.

Q. Mr. Morrow, did you ever attend a meeting of conduit manufacturers in which any understanding or agreement was arrived at to bring about adherence to the prices appearing on the cards as published by various manufacturers?

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Mr. MacIntyre: I object to this witness' speculation or conclusion as to whether or not acts committed by other people amounted to an agreement between them to do these things. It is far too broad, and there has been no foundation laid to show that this witness is prepared to give competent testimony on that.

I ask that the question be read.

Trial Examiner Norwood: This question goes to 4659 meetings which he attended.

Mr. MacIntyre: It goes also to acts of other people, and what they had done between themselves.

Trial Examiner Norwood: Objection overruled.

You can answer that as far as any action of the body itself is concerned.

The Witness: Will you read the question?

Trial Examiner Norwood: Read it, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: No, sir.

By Mr. McDaniel:

Q. Did you ever attend a meeting of conduit manufacturers at which any decision was made, or understanding reached, toward requiring jobbers to maintain their agency agreements?

A. No, sir.

Q. Did you ever attend a meeting of conduit manufacturers at which representatives of the industry undertook to maintain their card prices?

Mr. MacIntyre: I object to that.

The Witness: No, sir.

Mr. MacIntyre: It calls for a conclusion as to whether any action taken on the part of others was for the undertaking to adhere to prices, or card prices.

Trial Examiner Norwood: The question is only 4660 directed to some act of formal agreement.

Mr. MacIntyre: I ask that the question be read.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

Mr. MacIntyre: I think it goes to undertakings rather than agreements here.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: I beg counsel's pardon. I think that is rather vague there.

Mr. McDaniel: I will reframe the question.

Trial Examiner Norwood: Yes.

By Mr. McDaniel:

Q. Did you ever attend a meeting of manufacturers of conduit, Mr. Morrow, at which representatives of the manufacturers made statements in each other's presence, that they were going to adhere to their published price, card prices?

A. No, sir.

Q. Where is the manufacturing plant of Spang Chalfant, Inc. located?

A. Etna, Pennsylvania.

Q. Where is that with reference to Pittsburgh?

A. Approximately six miles from the center of town.

Q. Is it within the switching limits of Pittsburgh?

A. It is.

4661 Q. What does that mean with reference to a comparison between Pittsburgh—rates from Pittsburgh to places outside the switching limits, and rates from Etna to places outside the switching limits?

A. It means that the rates from Pittsburgh and Etna to places outside the switching limits are identical.

Q. Do you know what the rate is from Pittsburgh to Chicago?

A. 37 cents.

Q. What is it from Etna to Chicago?

A. 37 cents.

Q. What is the rate from Pittsburgh to New York?

A. 36 cents.

Q. And from Etna to New York?

A. 36 cents.

Q. From Pittsburgh to Baltimore?

A. That is 30 cents.

Q. And from Etna to Baltimore?

A. Being 30 cents.

Q. Per hundred weight?

A. Per hundred pounds.

Q. Is that situation also true of places close to the switching limits of Pittsburgh?

A. Yes, sir.

Q. Can you give us an example of a town that is close by?

A. Yes. Butler, Pennsylvania. It is about thirty
4662 miles from Pittsburgh, and the rates from Pittsburgh to Butler and Etna to Butler are the same, 9½ cents.

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Q. What is the monthly capacity of the Spang Chalfant plant for all types of rigid steel conduit?

A. Approximately 2500 tons.

Q. Since Spang Chalfant has been in business has it sold some conduit on the Chicago basing point prices?

A. It has.

Q. Do you know what percentage of its total tonnage has been sold—

A. Yes, I do.

Q. What is that percentage?

A. 9 percent.

Q. Over what period is that?

A. From the time that they are in business—or from the time Spang Chalfant started in business, until the end of November, 1940.

Mr. MacIntyre: May I have the question and the answer that preceded this last question and answer?

Trial Examiner Norwood: Read it, please, Mr. Reporter.

(The record referred to was read by the Reporter.)

Trial Examiner Norwood: Proceed.

By Mr. McDaniel:

4663 Q. Mr. Morrow, to your knowledge, was the adoption by Spang Chalfant Company of the basing point system, or the continued use of the system, the result of any understanding or agreement between Spang Chalfant, Inc. and any other respondent in this case?

A. No, sir.

Q. Have you personally ever had any agreement or understanding with anyone to use the basing point system?

A. No, sir.

Q. Have you, or, so far as you know, anyone else on behalf of Spang Chalfant, ever felt any sense of obligation toward any company or any individual to use the basing point system of quoting prices?

Mr. MacIntyre: I object to that.

This man is not qualified to testify as to what sense of obligation other individuals in the company felt towards this.

Mr. McDaniel: It is directed only to his knowledge.

Trial Examiner Norwood: I think it says, "as far as you know."

Mr. McDaniel: That is right.

Trial Examiner Norwood: Of course, you will base that on anything they said to you, or any of their actions.

Objection overruled.

4664 Answer that from your knowledge.

The Witness: So far as I know, no, sir.

By Mr. McDaniel:

Q. Did you personally ever have any agreement or understanding with anyone to use or adopt uniform price cards?

A. No, sir.

Q. As far as you know, did anyone else on behalf of Spang Chalfant ever have such an agreement?

A. No, sir.

Q. Did you or anyone else on behalf of Spang Chalfant, as far as you know, ever have any understanding or agreement to adhere to the prices appearing on the price cards?

A. No, sir.

Q. Have you felt free at all times to change the price cards that you had jurisdiction over?

A. Yes, sir.

Q. Did you or anyone else, that you know of, on behalf of Spang Chalfant, ever agree with any of the other manufacturers of conduit to issue freight rate bulletins or delivery charge booklets for use in quoting prices on rigid steel conduit?

A. No, sir.

Q. Did you or anyone else, so far as you know, on behalf of Spang Chalfant, Inc., ever have any agreement or understanding with any other conduit manufacturers

4665 or wholesalers to use or to continue to use the Donnelly freight rate bulletins?

A. No, sir.

Q. Have you, or, so far as you know, anyone else, on behalf of Spang Chalfant, Inc., ever felt any sense of obligation to anyone to continue the use of the Donnelly freight rate bulletins?

A. No, sir.

Q. Did you ever have any agreement or undertaking with anybody that you would use any particular kind of consigned stock contract?

A. I did not.

Q. Have you, or, to your knowledge, anyone else on behalf of Spang Chalfant, Inc., ever agreed with any other manufacturers of conduit, or with anybody else, to adopt and use any uniform discounts or other forms of compensation to be allowed to the distributors?

A. No, sir.

Q. Have you ever entered into any agreement or understanding with distributors as to the prices at which conduit was to be sold, other than the individual consigned stock agreements entered into with separate distributor agents?

A. I have not.

Q. So far as you know, have any such agreements been made by anyone else on behalf of Spang Chalfant, Inc.?

4666 A. No, sir.

Q. Have you ever agreed, or, so far as you know, has Spang Chalfant, Inc. ever agreed with anyone else to be bound by any particular list of recognized jobbers or dealers in conduit?

A. No, sir.

Q. Have you or anyone else that you know of, on behalf of Spang Chalfant, Inc. ever had an agreement, or understanding with any other respondent to a plan for dividing the United States into Pittsburgh and Chicago basing point areas?

A. No, sir.

Q. Mr. Morrow, does Spang Chalfant, Inc. have costs that are incurred in connection with its conduit business, which remain substantially constant under varying rates of production?

4668 The Witness: They do.

By Mr. McDaniel:

Q. What generally are those costs?

A. Oh, insurance—I will give you some items—taxes, depreciation, maintenance and repair, mill and general administrative overhead.

Q. Do those costs which you have enumerated constitute a substantial part of the cost of production of conduit under a normal rate of production?

A. They do.

Q. Does your company prepay freight on its shipments of rigid steel conduit?

A. We do.

Q. Mr. Morrow, over the years, and thinking as of normal times prior to the present emergency conditions, and in your experience in the conduit business over those years, has it been the practice for the company you are connected with to protect its dealers and contractors in the face of price increases on specific building contracts or otherwise?

A. That is true, we have.

Q. That has been true to some extent in Spang
4669 Chalfant, as well as Central Tube Company?

A. That is correct.

Q. Has Spang Chalfant made it a practice to hold contractors to particular prices in the event of a price reduction?

A. It is impossible.

Trial Examiner Norwood: The contract takes care of that, does it not?

The Witness: As a matter of fact, as a matter of practicality, if the price goes down, and you have a contract with a higher price, it is not specified, the contractor does not specify, or goes out and purchases from some other competitor.

By Mr. McDaniel:

Q. Under normal conditions, what percentage of Spang Chalfant's conduit sales are made out of consigned stocks?

A. More than 80 percent.

Q. In your experience in the business over the years, have you found out whether a small manufacturer can bring the price down by issuance of a lower price card?

Mr. MacIntyre: I object. It calls for a conclusion. I would not object to the witness testifying what occurs when someone has done, within his knowledge, one thing, and something then happens, to his knowledge, in connection therewith; but to ask him to give an opinion is certainly going beyond the facts.

4670 Mr. McDaniel: I was about to ask that. I might withdraw that question and ask him this one:

By Mr. McDaniel:

Q. Do you know of occasions, in your experience over the years in the conduit business, where small manufacturers have brought the general price down by the issuance of lower prices?

A. Yes, sir.

Mr. MacIntyre: I did not have a chance to object to the question before it was answered, but that is the same question that I objected to, and which was withdrawn, except with different words.

He did not ask whether that occurred simultaneously, or how.

Trial Examiner Norwood: You may cross-examine him.

You mean by that, that the general price followed the lower quotation by the small manufacturer, is that what you mean?

The Witness: What I mean is the small manufacturer persistently quoting over a period of two, or three, or four weeks, on public bids, at lower prices than his published prices, where our distributors are quoting on the basis of our published prices, no manufacturer can live with a situation of that kind, because his distributors are very unhappy; they want to know why you do not put them
4671 in position to meet competition, this fellow is doing that, and naturally you have to recognize that that competition exists, and a small manufacturer, therefore, can by cutting prices pull down the entire structure.

Trial Examiner Norwood: Then the larger manufacturers have met those lower prices?

The Witness: Yes, sir.

Mr. McDaniel: That is all.

Trial Examiner Norwood: Have they met those prices locally or generally?

The Witness: Well, Mr. Examiner, it has been done both ways.

For instance, New York metropolitan area here has always been a hot bed of cut prices, and in my own experience we have elected to meet prices here under a very ragged market condition, which might not apply on the Pacific Coast of some other point.

Mr. Gilpatric: May I ask one question?

Trial Examiner Norwood: Yes.

By Mr. Gilpatric:

Q. Mr. Morrow, following up that last question Mr. McDaniel asked, do you know of any instance where any manufacturer, large or small, has been able to initiate a price increase unless this has been followed by other manufacturers?

Mr. MacIntyre: Object to that. It calls for specu-
4672 lation.

Mr. Gilpatric: Read the question, please.

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Objection overruled.

You can answer that question.

The Witness: I know of no case.

Mr. Robison: May I ask a few questions?

Trial Examiner Norwood: Yes.

By Mr. Robison:

Q. Mr. Morrow, you gave us freight rates from Pittsburgh to Chicago as 37 cents, if I remember correctly?

A. That is correct.

Q. Do you remember whether or not that is also the freight rate from Pittsburgh to Evanston, Illinois?

A. No, I don't.

Q. And in so far as your recollection goes, how long has that 37-cent rate from Pittsburgh to Chicago been in effect?

A. Oh, for several years, is my recollection.

Q. Do you recall whether or not during the period since the beginning of Federal control of the railroads at the end of 1917, there have been times, or at least a time when the rate from Pittsburgh to Chicago was higher than the present rate, 37 cents?

4673 Mr. MacIntyre: Object to that. That is not the proper way to get that type of evidence in, and furthermore it is irrelevant and immaterial.

Trial Examiner Norwood: He can answer if he knows. Objection overruled.

Answer from your own personal knowledge about that.

The Witness: I have no knowledge of that.

Mr. Robison: Thank you.

Trial Examiner Norwood: Cross examine.

Cross-Examination by Mr. MacIntyre.

Q. What is the rate per hundred feet on rigid steel conduit, one inch, from Pittsburgh to Chicago?

A. I do not know.

Q. What is the rate per hundred feet on conduit from Pittsburgh to New York?

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A. I do not know.

Q. Do you know the difference between the Pittsburgh base and the Chicago base, in terms of basing point price per hundred feet?

A. I know it in dollars per ton, sir.

Q. And how much is that?

A. $4.00.

4674 Q. How long has it been that?

A. My recollection is that it goes back to at least '33, to the best of my knowledge.

Q. Is it your testimony, Mr. Morrow, that the rates per hundred pounds of conduit—that is railroad freight rates—are the same from Butler, Pennsylvania, as they are from Etna, Pennsylvania?

A. I did not testify to that. I do not know whether the freight rate from Butler to Philadelphia and from Etna to Philadelphia are the same or not.

Q. It is your testimony that the rates from Butler, Pennsylvania, to Cleveland on one hundred pounds of conduit are the same as the rate from Etna, Pennsylvania, to Cleveland, Ohio, on the same?

A. I did not testify to that, and I do not know.

Q. Is it your testimony that the rates from Butler, Pennsylvania, on one hundred pounds of conduit by rail to New York City are the same as the rate from Etna, Pennsylvania?

A. I did not so testify, and I do not know whether the rates from Butler and Etna to New York are the same or not.

Q. Would your answer to the same type of question, involving freight cost with respect to Baltimore and

4675 Washington, be the same?

A. Yes, sir.

Q. That is, that you do not know what the rates are?

A. That is right.

Q. You do not intend any of your testimony here today to be taken as indicating that the rates from Butler, Pennsylvania, are the same as the rates from Etna, Pennsylvania, to Chicago, to Cleveland, to New York, to Philadelphia, to Baltimore, or Washington, do you?

A. That is correct, sir.

Q. Or to any point outside of Pittsburgh?

A. That is correct.

Q. Would your answer be the same with respect to ques-

tions relating to railroad freight rates on conduit from Struthers, Ohio, and from Etna, Pennsylvania?

A. My answer would be the same.

Mr. McDaniel: You say Etna, Pennsylvania?

Mr. MacIntyre: Yes.

Mr. McDaniel: I do not know what the question means, because I think that would be a matter of arithmetic. Are you comparing Etna, Pennsylvania, with Butler and Struthers?

Trial Examiner Norwood: Read the question.

Mr. McDaniel: I do not know what the question means.

4676 Mr. MacIntyre: I am comparing Struthers and Etna.

Trial Examiner Norwood: Read the question.

(The question referred to was read by the reporter.)

Trial Examiner Norwood: Objection overruled.

By Mr. MacIntyre:

Q. Is it your testimony that the rate from Struthers, Ohio, to Pittsburgh, Pennsylvania, is the same as the rate from Butler, Pennsylvania, and Etna, Pennsylvania, into Pittsburgh?

A. I do not know those rates.

Q. You have testified concerning the constant cost elements of your company?

A. That is correct.

Q. What percentage of the total costs of your company are represented by these so-called constant costs?

A. I cannot give you a percentage figure. I know, talking with our auditors and comptroller, and getting the monthly cost figures, that the items I enumerated are quite substantial.

Q. In your estimation is 90 per cent of 100 per

4677 cent substantial?

A. 90 per cent of 100 per cent is substantial, yes.

Trial Examiner Norwood: What do you mean, 90 per cent?

Mr. MacIntyre: Of 100 per cent of anything.

By Mr. MacIntyre:

Q. In your estimation is 25 per cent of 100 per cent of anything a substantial part of 100 per cent?

A. Translated to costs, definitely; constant costs.

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Q. Is it also your estimation that 10 per cent of 100 per cent is a substantial part of a whole?

A. In relation to costs, definitely.

Q. So, anything between 10 per cent of a total to 100 per cent of a total of anything is substantial in your estimation when related to costs?

A. Yes, sir.

Q. What about 5 per cent, would it be substantial?

A. I have certainly seen a day when 5 per cent was the difference between red and black on our books.

Q. It would be substantial in that case, then?

A. You bet it was.

Q. Can you say the same thing about two and a half per cent?

A. We could narrow it down to two and a half per cent.

Q. And it would still be substantial?

A. In that relation, yes, sir.

4678 Q. Could you narrow it any smaller than that, and still consider that it is substantial?

A. I am sorry, let us call two and a half per cent the irreducible minimum.

Q. So substantial may mean anything from two and a half per cent up to ninety per cent?

A. Yes, sir.

Q. In relating it to costs?

A. Yes, sir.

Q. You have in response to some questions that Mr. McDaniel put to you, and Mr. Gilpatric, told them what a manufacturer could or could not do when some one manufacturer, large or small, did something else. Do you recall your answers on those questions?

A. Yes, sir.

4679 Q. Mr. Morrow, what did you mean when you told Mr. McDaniel and Mr. Gilpatric that a manu-
4680 facturer could not continue to quote his so-called going prices if some small manufacturer cut that price?

A. What I mean by that statement, I think is very definite and clear in my mind, that no matter how large a competitor might be, no matter how big a leader he is in the field, and no matter how wide the distribution he has, if somebody—the smallest competitor he has—continues constantly in public bids and otherwise to cut below the larger manufacturer's price, the large manufacturer has to recognize that competition.

Q. Why does he?

A. Pressure on him, not only from his distributors, to maintain a fair proportion of the distribution that is being offered.

4681 Q. In other words, he does that—he would be compelled to do that, as you say, in order to maintain his fair proportion of the distribution of conduit, is that correct?

A. That is correct.

Q. You mean by "fair proportion of the distribution" of conduit, to mean his relative standing in shipments made by him, that is, in his relation to his competitors' volume, is that correct?

A. You could put it that way. I interpret capacity and service. For instance, certain manufacturers have, through wide distribution, through long years in experience, through extreme advertising, great sales effort, built up and have earned a large place in the business than a small fellow who has not done any of those things; therefore, the effort that is put into sales is the governing factor, in my mind, rather than the relative capacity of the plants.

Q. That is what you had reference to, when you used the term "fair proportion of the business"?

A. Based on sales efforts, yes, sir.

Q. And when you were speaking of proportion of the business, you were talking about proportion of shipments?

A. Naturally, a sale is not a sale until it is shipped.

Q. Is it your testimony in that direction also that shipments reflect—that is the total shipments of conduit as of any particular time—reflect the total demand for

4682 conduit?

A. Will you please read that again?

Trial Examiner Norwood: Read the question, Mr. Reporter.

(The question referred to was read by the reporter.)

The Witness: Naturally, you have so much demand, which varies up and down; if the shipments during—that is, any particular month represent so many tons, then I would say that under normal conditions that would represent the normal demand.

Q. Can you think of any period of time when that was not true?

A. Yes, it is true right today. The demand for conduit today, for example, under these conditions, is greater than

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the manufacturers can turn out, so that the combined shipments of all the companies—for instance, in the month of January, this year, this month—would not be a true reflection of the demand, because the demand is beyond what they actually ship.

Q. And that has been true during this defense program?

A. Yes, sir.

Trial Examiner Norwood: That has been true of rubber tires?

The Witness: Yes, sir.

By Mr. MacIntyre:

4683 Q. Can you specify any other period of time when such a condition has existed? That is, where shipments do not accurately reflect the demand?

A. Yes, sir. In 1923 and '24, and then in '28, we had very substantial demands, and then for a few months in 1937 we had a soda water boom.

Q. In 1937 did shipments equal capacity in the industry?

A. Over the year, no. But in certain months, yes.

Q. So taking the year as a whole, would you say that the shipments in 1937 reflected the demand?

A. Yes, sir.

Q. Can you think of any other period such as this defense period that we are in right now, where demand has not been reflected by shipments, that is limiting your period of time, say, to 1934 to date?

A. No, a sustained period of demand over supply was in the first World War, we had that situation; then in the post war boom of '22 and '23; we had some of it in there, and then again in '28 and '29, and then, as I say, we had a few months in 1937 that we felt were going to be very good.

Q. From all of your experience in the industry, do you know of any real difference in tonnage between consumption of conduit and demand as of any particular period or date?

The Witness: Will you please read the question?

Trial Examiner Norwood: Read the question, 4684 please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: I think I have answered those questions. I have just said that in stating these different periods, Mr. MacIntyre.

By Mr. MacIntyre:

Q. In other words, you do not differentiate between consumption and demand; when you have been speaking of demand, you have been speaking of consumption of conduit in the country?

A. Yes, sir.

Q. Is it not a fact, Mr. Morrow, that demand for conduit fluctuates in one area, such as Philadelphia, in one direction at the same time, when it fluctuates in another way in, say, Washington, D. C., in the opposite direction, due to conditions existing in those two areas at the same time in building construction?

A. Yes, certain areas have more active building business than others. That has always been true. Then, another factor has entered into that picture as relates to conduit, and that is some of the substitutes for conduit have grown stylish in certain communities for a period of time and have taken away the demand for conduit, and substituted metallic tubing, we will say, and then that metallic tubing would run its course, and then the conduit would come back to its own status, and normal de-
4685 mand.

Q. In other words, from time to time there was interchangeability between the two, is that correct?

A. That is correct.

Q. Referring again to this Philadelphia and Washington situation, the fluctuations of demand being different in the two cities, you have actually noted facts of that character occur in those two cities in the past six or seven years, have you not?

A. We will take today as an example, because there is restriction on all building that is non-essential, and Philadelphia is, of course, like all other cities with non-essential building, and it is tied down, and yet in Washington they were putting up temporary buildings and houses and things of that kind, so that the demand in Washington today is tremendous against its normal requirements.

Trial Examiner Norwood: Read the previous question.

(The question referred to was read by the Reporter.)

Trial Examiner Norwood: Is that your complete answer?

The Witness: Yes, sir.

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By Mr. MacIntyre:

Q. Aside from the period of this defense program, you have noticed that back during 1936 and 1937, when the Government was building many large buildings in Washington, at a time when there were no restrictions placed on the use of conduit in Philadelphia, other than just the lack of demand for it on the part of people, is that correct?

4686

A. Yes, Washington was booming with Government building, and a spending arrangement, and Philadelphia is not going along. We would say that Philadelphia is over-built. I would say that Philadelphia now is an over-built city, so far as—

Trial Examiner Norwood: Wait a minute. Does that answer the question?

Mr. MacIntyre: Well, I think he is partially answering the question.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. So the condition of the use—that is, of an increasing demand due to building operations in Washington, D. C.—has occurred in years prior to the defense program, when there was also a situation of decreasing demand for it in Philadelphia?

A. Yes, sir.

Q. One of those periods of time that you can recall is about 1937-1938, is it not?

A. Yes, in that period.

4687

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

By Mr. MacIntyre:

Q. On this question of your contracts, and as to whether or not you attempted to hold your customers to them, they were contracts which your company willingly entered into with those customers, were they not?

A. You are referring now, are you, Mr. MacIntyre, to the specific building contracts?

Q. Well, that would be true of any contract that your company entered into with any of its customers, would it not?

A. No. There are various types of contracts.

Trial Examiner Norwood: Any building contract?

The Witness: That is what I asked him, Mr. Examiner, whether he was referring to the specific building contracts covering jobs.

By Mr. MacIntyre:

Q. Let us confine your answers to that at the moment. Your company willingly entered into those contracts with its customers, did it?

A. Naturally, we solicited the business.

Q. And with your full knowledge of the conditions, terms, that the contracts provided for?

A. Correct.

4688 Q. And at any time that your company did not enforce any of those contracts, it did it with—that is, upon its own volition, did it not?

A. Pardon me?

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: A specific building contract, I have always construed it.

Trial Examiner Norwood: Did it do that willingly or unwillingly?

The Witness: We have entered into these contracts willingly.

By Mr. MacIntyre:

Q. But at those times when you did not enforce them you failed to enforce them willingly, too, did you not?

A. Yes, sir.

Q. Referring again to this question of price cuts by some small manufacturer and the same being made by other larger manufacturers.

You know of instances where that has occurred and where the small manufacturer just cut a price in an area without publishing price cards reducing the price level throughout the entire country, is that not true?

4689 A. That is a very long question, Mr. MacIntyre. May I have it repeated?

Trial Examiner Norwood: You want to know if a single price cut made by a small manufacturer would bring the market down?

Mr. MacIntyre: I am asking now what his information

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is as to what, however, occurred when such things as I have outlined in the question, occur.

The Witness: May I have the question?

Trial Examiner Norwood: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter.)

The Witness: An isolated price cut by a smaller manufacturer would not reduce necessarily the price generally over the country, but a series of price cuts would.

By Mr. MacIntyre:

Q. You have noted instances where a series of price cuts in a few localities by a small manufacturer has resulted in a reduction of the price level throughout the country, have you?

A. Yes, sir.

Q. Is it not also a fact, Mr. Morrow, that you have noted a price cut by a small manufacturer in a small area, where it marketed its goods, that is, throughout an
4690 entire small area where it marketed its goods, and rumors were also to the effect that some other small manufacturer in another area had also made a price cut to a single customer, when the larger manufacturers reduced price levels throughout the entire country by a substantial amount?

A. May I answer that question this way:

That you cannot confine a price cut to a small area. We are in a position and have been where we have contractors in New York who do business all over the United States. If they are able to buy—assuming that New York is the affected area in your illustration, and they are able to buy here and ship into Texas at prices lower than the Texas contractors are able to purchase, naturally the price structure in Texas follows very quickly because of the competition that is originated in a very local area.

4691 Q. That competition is anticipated in many instances by the publication of a price card taking care of it all at one time throughout the whole country, is it not?

A. But I would not say many times.

Q. Do you know of any time when a price card was issued by any one covering the area outside of Texas, and subsequently another price card was issued by the same company making the price card only applicable to Texas?

A. I have never known of a price card being issued in anticipation of cut prices. Cut prices were initiated and the reduced prices followed logically.

Q. But did you ever know of an action on the part of any conduit manufacturer in issuing a price card in one section of the country that is lower than the price in another, and later issuing another price card making the same reduction in another part of the country?

A. Do I know of any case where a manufacturer has at the same time two published price lists that are not the same?

Q. Yes.

A. I know of no such case.

Q. Who attended the meeting of the Rigid Steel Conduit Association for Spang Chalfant in April, 1940, Mr. Morrow?

A. I happened to see the minutes, and I was not associated with Spang Chalfant, but I could answer the question, Mr. A. H. Dufort attended that meeting.

4692 Q. Do you know who told him to attend?

A. I would have no knowledge of that. I was not with Spang Chalfant at the time, and I would have no knowledge of that at all.

Q. Is it also your testimony that you do not know, or do not have any knowledge as to what authority he had for representing Spang Chalfant at that meeting?

A. That is my testimony. I have no knowledge.

Q. Mr. Morrow, assume that there is a meeting of representatives of rigid steel conduit manufacturers, assume further that many of them represent companies who are members of the Rigid Steel Conduit Association; assume that during the course of that meeting a representative of one of the manufacturers in attendance arises and makes a statement concerning the practices, that is the sales practices which are being used in the industry, or at least a statement concerning a number of the sales practices being used in the industry; expresses an opinion as to the beneficial character of some of those practices upon his company, and probably upon other companies, and announces that his company is going to follow a particular course in meeting the problems of making the operation of certain practices what in his opinion would be more beneficial to his company; assume further that after that meet-

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ing, shortly after, his company follows the course that
4693 he outlined in his statement during that meeting, and that that course was also followed by a number of others, whose representatives were in attendance at that meeting; is it your understanding that there was any meeting of the minds or agreement among those in attendance at that meeting?

Mr. McDaniel: I object to the question, because it is a hypothetical question, based upon facts which, if they exist at all in the record, have no relation.

Trial Examiner Norwood: It would be only on cross-examination to determine his understanding of the word "agreement." I think the phrase there "meeting of the minds" does not belong in your question at all. It is not identical with the word "agreement."

Mr. MacIntyre: If Your Honor please, can I not test this witness?

Trial Examiner Norwood: He did not testify anything about meeting of the minds, he testified about making agreements. You may test his understanding of the term he has used there, what he intended to convey by it. If counsel will strike that phrase, I will overrule the objection. If he does not strike it I will sustain the objection.

Mr. MacIntyre: Is it the ruling of His Honor that I am not permitted to find out whether or not the particular set of facts would mean to this witness a meeting of
4694 the minds of a particular group?

Trial Examiner Norwood: It is absolutely irrelevant what this witness understands by a term which he has not used in his testimony. He has used the term "agreements."

Proceed.

Mr. MacIntyre: Well, for the moment I will strike that word "meeting of the minds" from that question.

Will you please answer that question, Mr. Morrow?

Trial Examiner Norwood: Did you understand those circumstances which he has related there to describe an agreement as you used the term in your previous testimony?

In other words, when you denied agreements, did you intend to deny such situations as he has described there?

The Witness: I would certainly deny that situation, yes, sir.

Trial Examiner Norwood: Would the circumstances he

related there be an agreement or not? Amount to an agreement?

The Witness: In my opinion it would not amount to an agreement. There are various ways of publishing an individual policy, you can do it by word of mouth, you can have it printed and mailed to your distributors. I would not consider that constituted an agreement, Your Honor.

By Mr. MacIntyre:

4695 Q. Mr. Morrow, would a meeting of the minds of a particular group of people upon a particular problem, and how they could meet that problem, constitute in your mind an agreement among them on the meeting of the problem?

Mr. Welch: I object to that, because I think that question answers itself.

Trial Examiner Norwood: Objection overruled.

Let us see if it does in his mind.

The Witness: As I understand your question, if we gentlemen around this table today, all sat down and agreed on certain things, and certain policies among each other, to carry out into business, that, to my mind, would be a very definite agreement, if we individually agreed among ourselves to go out and follow certain prices.

Mr. MacIntyre: I do not think that answers my question, so I will ask it again.

By Mr. MacIntyre:

Q. Mr. Morrow, is the action of any group of men in meeting or discussing with each other a problem and arriving at a meeting of their minds on that problem on how to handle it, in your mind, an agreement among them?

4696 Mr. McDaniel: I would like to have that question made more specific.

Trial Examiner Norwood: Do you object to the question?

Mr. McDaniel: I object to it.

Trial Examiner Norwood: Objection sustained.

By Mr. MacIntyre:

Q. Mr. Morrow—

Trial Examiner Norwood: The continuing of this is mere argument, and I am going to ask the counsel to pursue

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another subject, if he has another that he wants to examine this witness on. He has told you what he meant.

Proceed.

By Mr. MacIntyre:

Q. Mr. Morrow, when you stated to Mr. McDaniel on direct examination that there were no agreements among manufacturers concerning the use of the basing point system relating to its use, did you take into account discussions which may have taken place among manufacturers as to whether or not the Chicago, the Evanston and the Pittsburgh base should be continued?

Mr. Gilpatric: I object to the question on the ground that there is no proof of any such discussions in the record today, about continuing the Chicago, Pittsburgh and Evanston bases.

Mr. McDaniel: I have a further objection to that, Your Honor, on the ground that I believe it is a misstate-
4697 ment of the record.

Trial Examiner Norwood: Objection sustained.

Mr. MacIntyre: If Your Honor please, I now move to strike from the record the answer of this witness on direct examination in response to one of Mr. McDaniel's questions, to which I made objection at the time, the answer of the witness being that there were no agreements between various manufacturers at any meeting concerning the use of the basing point system, or the quoting of prices, and that answer is not confined to this witness' company, or to the witness at all. He was permitted to answer it over my objection.

Mr. McDaniel: The record will have to stand as it was made, but on the basis as it was made, as I recall it, there is no ground for Mr. MacIntyre's motion.

Trial Examiner Norwood: I think he has explained to us very thoroughly what he meant by "agreements."

The motion is denied.

By Mr. MacIntyre:

Q. Mr. Morrow, when you answered Mr. McDaniel's question concerning the existence or the entering into of any agreements concerning the use of freight rate systems and freight rate services by conduit manufacturers, did you take into account any concerted and combined effort on the part of manufacturers to secure any par-

4698 ticular service on freight rates, that is in the compilation of them and distribution of them, and the use of them by manufacturers?

A. Yes, I took that into account.

Q. Did you also at that time that you answered such questions take into account that conduit manufacturers who were members of the Rigid Steel Conduit Association had by a common discussion among themselves employed Mr. Herbert S. Blake and the Organization Service Corporation to prepare uniform forms for contracts and other sales papers for conduit manufacturers?

Mr. McDaniel: I object to the question, because it is contrary to the testimony that we have had heretofore.

Trial Examiner Norwood: The objection is sustained. There is no use of having this kind of argument, except to throw light on his understanding of the term "agreement" and he has explained that to us very thoroughly. I will tell the counsel again not to pursue the subject any further, if he does he will be out of order.

Mr. MacIntyre: That is all, Mr. Morrow, if I cannot continue with that.

Trial Examiner Norwood: Redirect?

Redirect Examination by Mr. McDaniel.

Q. Mr. Morrow, you testified in your prior testimony that you were with Central Tube Company for many
4699 years, does Central Tube Company manufacture standard pipe?

A. Yes, sir.

Q. Was that the largest part of its business?

A. Yes, sir; conduit was a very small part of our business.

Q. What are the facts with regard to that in Spang Chalfant's business?

A. It is the same, exactly the same, except this, it is really in Spang's case a much smaller part of the business than it was with Central's.

Q. In your business life, have you worked with standard pipe as well as conduit?

A. Yes, standard had probably 90 per cent of my time, and conduit 10.

4700 Mr. McDaniel: I have no further redirect examination.

Trial Examiner Norwood: Have you any further questions?

Recross Examination by Mr. MacIntyre.

Q. You have just told Mr. McDaniel, Mr. Morrow, that conduit is a small part of the business of the Spang Chalfant Company, and was also a small part of the total business of the Central Tube Company. Now, I will ask you, from your knowledge in the business, if you did not find the same situation true also with respect to the Gen-
4701 eral Electric Company, the Youngstown Sheet & Tube Company, and the Republic Steel Corporation, and the Fretz-Moon Company?

A. Yes, sir.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Thank you, Mr. Morrow.

(Witness excused.)

The hearing in this case is now adjourned, to reconvene at ten o'clock a. m., on Tuesday, January 27, 1942, in the office of the Federal Trade Commission, Washington, D. C., 6th and Constitution Avenues, in such room as may be posted on the bulletin board in that building.

(Whereupon, at 12:55 p. m., January 16, 1942, the hearing in the above-entitled matter was adjourned.)

4704 Proceedings.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment in New York on January 16, the hearing in Docket 4452 is now reconvened in Room 532, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., Eastern Standard Time, January 27, 1942.

Please note the appearances.

Respondents, call your next witness.

I will say with respect to the two lists of suggested corrections, that I have checked all of them up to the reports of our New York hearings, and that I have not been able to get those copies yet, but I hope to do so before the week is over, and I will hold the others and we will put them all in at the beginning of the first hearing following my completion of the checking.

Call your witness.

Mr. Stewart: Mr. Garland, please, sir.

Mr. Garland has been sworn.
Trial Examiner Norwood: Yes.
Give the Reporter your full name.
Mr. Garland: Robert Garland.

ROBERT GARLAND was thereupon recalled as a witness for the Respondents, and, having been previously
4705 sworn, testified further as follows:

Direct Examination by Mr. Stewart.

Q. Mr. Garland, I show you Commission's Exhibit No. 533, which is a memorandum entitled "Counsellor," and which the record shows that in Pittsburgh you stated to Mr. MacIntyre had been prepared by Mr. Blake.

I would like to ask you as to whether or not you know that Mr. Blake prepared that document.

A. Well, this was not—the statement made by me was not in giving testimony. You remember it was in Mr.—the statement I made was in Mr. Wick's office, if you remember, the first time, and at first glance it had the appearance of being prepared in Mr. Blake's office, and I probably said to you that it was, but I did not know. Thinking it over afterwards, looking into it, and talking it over with our people, I find I was in all probability mistaken. I took it at first glance, the appearance, but I have come to the conclusion now that it was not prepared in Blake's office. I don't know who prepared it. I don't know who prepared it. You remember that is in Mr. Wick's office.

Mr. Stewart: Addressing Mr. MacIntyre.

The Witness: It was not in the testimony.

By Mr. Stewart:

Q. Well, the point is, you do not know who prepared it.

4706 A. I don't know, no. I don't even have a guess.

Q. Now, I show you Commission's Exhibit 558, which is a portion of a letter on the letterhead of Leo P. O'Brien, and ask you if you know where the second page of that letter is?

A. I don't think I ever saw the first page.

Q. You don't know where the second page is?

A. No, I do not.

Q. What was the relationship between—

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A. It is not addressed to me. It went to the factory office. I don't know. I guess I did see it. I don't know what the second page is.

Q. Well, let me ask you, Mr. Garland, what was the relationship between your company and Leo P. O'Brien?

A. Well, he is a manufacturer's representative. He represents us and some other manufacturers.

Q. Did he sell for your company on commission?

A. On commission, yes.

Q. Did he have a consigned stock arrangement with you?

A. No.

Q. He was not your agent?

A. No.

Q. Did you authorize Mr. O'Brien to attend that meeting referred to in that exhibit?

A. I never did.

Q. Did you know anything about it?

4707 A. Well, I don't know—didn't know anything about it. I didn't know it was called, or anything of the kind. I may have heard about it, that there was a meeting, but we never authorized those meetings.

Q. Mr. Garland, how long have you been in the conduit business?

A. About 40 years.

4708 By Mr. Stewart:

Q. Mr. Garland, do you know whether West Pittsburgh, which is the point at which your plant is located, is in the Pittsburg freight area?

A. Yes.

Q. And the same is true of Ambridge?

A. No, it is not. It is not in the Pittsburgh freight area. It is in the Youngstown area. We call it the Pittsburgh district, but as far as freight is concerned it is Youngstown; it is the same as Youngstown.

Q. Do you know whether Ambridge is in the Pittsburgh area?

A. I think Ambridge—I am pretty sure—it is in Beaver County, and we are in Lawrence County. I think the freight district takes in, if I remember correctly, a 30-mile radius. I am pretty sure Ambridge is in.

4709 Q. Now, Mr. Garland, on the basis of your experience in the conduit industry, will you state whether or not the manufacturers of rigid steel conduit commonly

make sales through consigned stock agents and that shipments pursuant to such consigned stock arrangements are made directly from the mill to the place of use?

A. In some cases, yes, not in all. The great bulk of our consigned stock business is direct to the jobber.

Q. Now, what would you say as to your experience with reference to direct shipments to large construction projects? Is that commonly the method?

A. It is outside the bailiwick of the jobber. We ship direct.

Q. Now, in your experience in the conduit business, have you observed and do you know whether or not it is a matter of importance to the contractor buying conduit for his job for delivery from the mill in carload lots to receive deliveries at or immediately before the time when he is ready to install the conduit?

A. I didn't notice that particularly, unless it is an important job and time is the essence. They very seldom—we generally ship on order. Conduit is shipped very promptly, anyway. The jobber gets it in time to take care of his customer.

Q. Then, it would be important to the contractor 4710 to get immediate delivery?

A. Yes.

Q. And why is that?

A. Why is what?

Q. Why is it of importance to the contractor to get immediate delivery on a construction job?

Mr. MacIntyre: I object. The witness has testified as to what the facts are, and the reasons why it is important. The contractor element is beyond the competency of this witness to testify.

Mr. Stewart: Well, I should think—

Trial Examiner Norwood: He can tell us what he knows about that.

Mr. MacIntyre: Furthermore, it is irrelevant and immaterial.

Trial Examiner Norwood: Well, I think that it tends to be just that.

Mr. Stewart: I beg your pardon?

Trial Examiner Norwood: Go ahead. He may answer the question.

The Witness: Do I answer?

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By Mr. Stewart:

Q. Yes.

A. Well, it is important always for the contractor to get the material because the men are waiting on the
4711 job for material.

Q. Who are the principal customers for conduit?

A. Well, they vary. Lately it is the Government.

Q. Prior to that time.

A. Prior to that time, large construction work. Of course, our conduit goes in fireproof buildings, hotels, department stores, hospitals, schools,—everything of that kind,—industrial buildings. Those are the important uses prior to national defense.

Q. And the chief customers, I take it, are the contractors?

A. The chief customers now are the Government.

Q. I mean prior to the Government taking over the priority.

A. Prior to that, for large building purposes, from—coming from large engineers, through jobbers, and so on.

Q. Now, what has been your experience as to whether or not a small manufacturer can lower the general price level on rigid steel conduit by issuing a price card carrying prices below the prices currently published?

Mr. MacIntyre: I object to that. It is asking this witness to speculate and draw a conclusion as to what someone else may do.

Mr. Stewart: No. I am asking him what has been his experience as to that.

Mr. MacIntyre: Let us have the question read. He is asking what this little man can do. I submit the ques-
4712 tion should be read.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Stewart: I asked him what his experience is.

Trial Examiner Norwood: Make your answer factual. If you remember any occasion where the small manufacturer initiated a price change, you may tell us about it.

A. I never did. I don't know what other people did. Our company never did.

By Mr. Stewart:

Q. Why not?

A. Well, we consider ourselves somewhat small in the business. Whether we issued a card, we might have

issued a price, not a card. We might have lowered a price occasionally due to competition. That has been the custom. If we find somebody stole a customer away from us, or something of the kind, we would lower the price.

Q. Well, has that been your experience in the conduit business?

A. That has always been my experience in the conduit business—I would say from time immemorial, going back 40 or 50 years.

Q. Now, have you, in your experience, Mr. Garland, known of any instance in which a small manufacturer has been able to effect a general price increase by issuing a card?

4713 Mr. MacIntyre: I object. It is not shown that this man is competent to testify and give speculation and conclusions as to what someone else was able to do.

Trial Examiner Norwood: If he knows whether he did it or not.

Mr. Stewart: Yes, that is the question.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

Now, off the record just a minute.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

Do you want the question read?

The Witness: You said answer the question?

Trial Examiner Norwood: Yes.

A. It depends on what you call a small manufacturer. My recollection is that some of the manufacturers, not the very large manufacturers, have issued cards.

Trial Examiner Norwood: Do you recall the names of any of them?

The Witness: No, not offhand, but I think I could get the information.

By Mr. Stewart:

Q. Now, Mr. Garland, bearing in mind your answer to that question, have those small manufacturers,
4714 and, for that matter, large manufacturers, been able to initiate those increases of prices and make them effective without them being followed by all the other manufacturers?

Mr. MacIntyre: I object to that on the basis that it calls for speculation.

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Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Now, I think it would be much more satisfactory if you asked him if they did that, if he knows. He did not remember the names of the people.

Mr. Stewart: That is what I am assuming.

Trial Examiner Norwood: I will sustain the objection.

By Mr. Stewart:

Q. Well, do you know, Mr. Garland, whether or not there has been any instance in which any manufacturer, large or small, has been able to initiate an increase of prices which became effective unless it has been followed by all the other manufacturers?

Mr. MacIntyre: I object to that on the same ground as I objected to the other question.

Trial Examiner Norwood: Objection overruled.

Now, make that factual. If you remember those circumstances, you may tell us about them from your own knowledge.

Go ahead.

4715 The Witness: You mean the advance of price, or—

By Mr. Stewart:

Q. Increase in price. In other words, has one manufacturer been able to hold an increase in price, in your experience in the conduit business, without the rest following?

A. I would say that when an increase goes into effect some of the manufacturers don't follow until a considerable time has elapsed.

Trial Examiner Norwood: Well, does that defeat the attempt to raise it or does the price still stay up?

The Witness: It takes a considerable length of time after an increase is made until it is effective, because some of the manufacturers continue selling at the old price. Very seldom do you see a price advance go into effect immediately,—not for some considerable time afterwards.

Mr. Stewart: Cross-examine.

Cross-Examination by Mr. MacIntyre.

Q. Is it the policy of rigid steel conduit manufacturers, Mr. Garland, to take orders after the issuance of a new price card for a period of 15 days at the price card that immediately preceded it?

A. At the old price, you mean?

Q. Yes.

A. It would be more than that. Fifteen days is
4716 small. I have known them to take for six months.

Q. Will you please answer the question as to the 15 days.

A. I never knew of a 15-day period. I don't know where the 15 days applies.

Q. Is it your testimony that in all of your experience you do not know of conduit manufacturers who have had a policy of taking orders after the issuance of a new price card at the quotation of the preceding price card?

A. Oh, yes.

Trial Examiner Norwood: What was that answer?

The Witness: Yes.

I might amplify that by saying you got to take care of outstanding contracts, contracts entered into by your own jobbers or stock representatives. You have got to take care of them at the old price, because you are committed.

By Mr. MacIntyre:

Q. Is it also your testimony that it is not the practice in the rigid steel conduit manufacturing industry for manufacturers to accept orders at the time of a price change, when they issue a new card, and especially when it is an advance, at prices on the preceding card for shipment within 15 days after the issuance of the new card?

A. Why, I say they have to take care of the commitments of their customers. Fifteen days would not apply there. They might come in 30 days afterwards and
4717 say they made a quotation, say, during the former period, which has been accepted, and the contract is made. They expect the manufacturer to take care of them. It is not a matter of 15 days. It might be 30 days. It might be more.

Q. Is it your testimony that you have no knowledge of the existence of a practice in the rigid steel conduit manufacturing industry whereby conduit manufacturers—

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A. Are tied for 15 days?

Q. For shipment within 15 days after the price change is made.

A. Well, some of the manufacturers do one thing; others do another. It depends on the instructions they give their representatives. Some may say, "You may take orders—you may take all commitments"; others may say, "We will take business," say, "for 60 days based on the former 60 days' purchases," something of that kind. They generally take care of their customers, but they generally do it different ways. I never found any uniformity about it. We may do one thing; somebody else might do another thing. It depends on the instructions they give their representatives.

Q. Is it your testimony that you have never recognized the existence of any uniformity?

A. I never recognized any 15-day period. As I say, some of the manufacturers may; some may make it 30 days; some have gone as far as to ship—to take care 4718 of their customers for 60 days previous based on the tonnage they purchased. But the manufacturers are all different on that, as I understand it.

Trial Examiner Norwood: Ordinarily, what would be the practice?

The Witness: Ordinarily, the practice is to put it into effect—put the new price into effect as quickly as you can.

Trial Examiner Norwood: With respect to the 15-day period?

The Witness: No. I never recognized in my business a 15-day period.

Trial Examiner Norwood: Well, what do they do ordinarily?

The Witness: Well, some of them give tonnage equal to the purchases of the previous 60 days.

Trial Examiner Norwood: There is no general practice, then?

The Witness: No general practice, no. No. Each man has his own. We have criticized other manufacturers for being too liberal in that respect.

By Mr. MacIntyre:

Q. Is it your testimony also, Mr. Garland, that there is no uniformity in the provisions of contracts which are executed by rigid steel conduit manufacturers with their consignment jobbers?

4719 A. No uniformity. When it comes to exercising any privilege, I find they are generally abrogated, and each man does as he pleases. It depends on conditions.

Q. Is it also your testimony that they do not execute contracts carrying uniform provisions?

A. It is their aim to do it, but I say they don't do it, from my own experience.

Q. Is it your testimony that they do not execute, that is, sign with their jobbers contracts which are uniform?

A. They do their best, but I don't think they always achieve their purpose.

Q. Well, is it your testimony that they do not execute them; that is, sign them with their jobbers?

A. Well, I would say that probably in the majority of cases they do; in a number of cases they don't. There is no uniformity.

Q. And is it also your testimony that there is no uniformity in the price quotations; that is, the price cards which are issued by the manufacturers and the terms and conditions of sale provided therein?

A. I have never experienced any.

Q. You do not know of any?

A. No.

Q. At any time. Is that correct?

A. Well, at the present time it is not so bad.

4720 Q. Well, before the present time you never knew of any?

A. Before the present time, no, I never knew of any uniformity—general uniformity.

Q. In any of the price cards?

A. No.

Q. Now, on direct examination you gave some testimony in response to questions of Mr. Stewart to the effect that small manufacturers and large manufacturers did certain things about cutting the price. Did you have reference there—

A. Did I say large manufacturers?

Q. Well, I think the question had large and small in it.

A. Oh, yes; that is right.

Q. And you answered the question.

I am asking you now whether or not that in the answers you gave in that respect you had in mind, or was making reference to, sales at prices which evidenced a cut from the price cards. Is that correct?

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A. Yes.

Q. How widely have rigid steel conduit manufacturers advertised, whether they are large or small, the fact that they made deviations at any time from the quotations contained in their price cards?

Mr. Stewart: Excuse me. I suppose you mean by "advertising"—

Mr. MacIntyre: I want to find out how it is done.

4721 Trial Examiner Norwood: Proceed.

A. I don't understand your question. I don't know anything about advertising.

By Mr. MacIntyre:

Q. Well, I will state it in a different way.

How widely have rigid steel conduit manufacturers, if and when they have, made quotations at prices different from those contained in their price cards, that is, made sales different from those contained in their price cards?

A. They generally find out after they have lost their contract—lost a big job.

Q. How?

A. Well, their price didn't get it, and somebody else cut below.

Q. And that is the only way they are able to find out?

A. That is all. They lose the business.

Q. Rigid Steel conduit manufacturers, then, in making a sale, if they do at prices different from those contained in their price cards, do not inform the trade that they have so made a sale?

A. I don't see why they should.

Q. Well, what has been the practice—

Trial Examiner Norwood: Why don't you answer his questions and not argue about it.

The Witness: The manufacturer loses the business.

4722 He may have cut the price himself. He might have cut it 2½ percent, and somebody else cut it 5. If he finds somebody else has got the business, he knows somebody else got it at a lower price.

By Mr. MacIntyre:

Q. He concludes they have due to the fact that they lost the business. Is that your testimony?

A. Yes.

Q. And what publication does he give to any deviation that he makes in prices?

A. I don't know of any publication.

Q. Is it your testimony that you know of no publication in the industry by a manufacturer that he is deviating from prices published in his price cards?

A. I don't recollect any publication.

Q. Is there any information passed around by manufacturers or by dealers by way of publication to the trade when sales are made at prices different from the card?

A. Not to the trade. A jobber might write to us that he lost a contract and he has reason to believe it was taken at a lower price. The only case where I know it is public is in Government bids, and the City of New York, or in some other such published bids. They come in all the time from the Army and Navy. An order was taken the other day at a cut price from the Navy.

4723 Q. Action, if at all, then, in that direction in all other sales are kept secret for the most part; is that correct?

A. Well, I don't think anybody would go—a man who cuts a price—

Trial Examiner Norwood: Wait. Wait.

Read that question, and answer that.

Read the question.

(Question read.)

Mr. Stewart: By whom?

I object to the form of the question. It is too vague and indefinite.

Trial Examiner Norwood: Objection overruled.

Now, answer the question.

The Witness: I don't know of being able to keep it secret. If I cut a price, I don't tell anybody—

Trial Examiner Norwood: Wait a minute. Just answer the question as to whether that is a fact or whether it is not.

The Witness: Repeat the question, please.

(Question read.)

A. I would say no. I don't know. I wouldn't want to answer the question. I don't know what you mean by keeping secret.

By Mr. MacIntyre:

Q. Making it known to the trade generally.

4724 A. We never made it known to the trade.

Q. By anybody.

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A. It is never made known to the trade, so far as I know. I never did.

Q. Now, you spoke to Mr. Stewart about the manner in which these shipments are made to contractors and how important they are. On these direct shipments to contractors for use on jobs, when sold through a jobber, who is a consignment jobber of yours, who pays the freight to you on such shipments?

A. We prepay the freight and collect from the customer, the jobber customer.

Q. That is, you pay the freight to the railroad?

A. We bill the jobber customer.

Q. And how much in advance are those shipments usually made when they are made direct to the job?

A. Well, it depends on the shipping directions. If it is to be shipped at once, it is shipped at once; if it is to be shipped in ten days, it is shipped in ten days; if it is to be shipped in 30 days, it goes out at that time. It depends on the instructions you get from the jobber who orders the material.

Q. But are we correct in our understanding of your testimony that you gave on direct in response to Mr. Stewart's questions that conduit, irrespective of how sold,
4725 whether on shipment direct to the job or to the jobber for consignment, is for the most part used, flowing right to the jobs and to consumers?

A. Yes.

Q. You spoke about the Federal Government being the principal purchaser lately, I believe is the term you used. Is the Federal Government now, as the principal purchaser, any different from the many smaller builders or owners of buildings which were constructed several years ago?

Mr. Stewart: I object to that on the ground that what is meant by "different" is not defined. The Federal Government is different; there is no doubt about that. Different in what respect?

Mr. MacIntyre: In their demand for conduit.

Mr. Stewart: I see what you mean.

Trial Examiner Norwood: Answer the question.

A. We do our business mostly with the Government through jobbers. In other words, we are sub-suppliers. We do some business direct. One difference we find is they don't pay as promptly as the jobber does.

Trial Examiner Norwood: Now, is that different from

the way you handle the smaller dealer, the builders and contractors?

Mr. Stewart: Well, are you assuming, Mr. MacIntyre, that he sells direct to the builder? Is that what you
4726 are assuming?

Trial Examiner Norwood: Wait a minute.

Read my question.

(Question read.)

Trial Examiner Norwood: Now, he has just said he sells the Government through the jobbers. Now, I am asking him if he sells these smaller dealers through the jobbers, or through the consignment agents.

The Witness: You mean the small contractors?

Trial Examiner Norwood: Yes.

The Witness: We sell contractors through the jobbers.

Trial Examiner Norwood: And you sell the Government in the same way?

The Witness: We sell the Government—practically 90 percent of what we sell the Government is through jobbers.

By Mr. MacIntyre:

Q. And what you sell the Government in that way is sold for the most part on a contract to a jobber and used by—I mean on a contract to a contractor and used by him on a Government building—that is, in building these camps—

A. The jobber probably—the jobber supplies the contractor. If it goes directly to the Navy, that is, material—even furnished lately, in the last few months, we shipped to the Navy yards, Portsmouth, Brooklyn Navy Yard,
4727 all those, and we charge the jobber and we ship direct to the navy yards; that is, we bill the jobber and he collects from the Government.

Q. You are not concerned with the amount he collects from the Government, but you are concerned with the amount you are able to collect from the jobber in many instances; is that correct?

A. Sure, sure.

Q. You told Mr. Stewart that small manufacturers did not have the ability; that is, they could not raise or lower a price during the issuance of a price card.

A. That was not the question. Nothing was said about ability.

Q. What?

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A. I don't think ability came into the question, Mr. MacIntyre.

Q. You do not distinguish between the word "ability" and the word "can" or "could"?

A. Well, I know I did not say ability. Of course, the small manufacturer does as he pleases. He has that right. He is independent as far as that is concerned.

Q. Well, is it possible—

A. That question was objected to before.

Mr. Stewart: Now Mr. MacIntyre wants to ask it over again.

4728 The Witness: Do you want me to answer the question?

Trial Examiner Norwood: Answer the question.

Mr. Stewart: Go ahead.

By Mr. MacIntyre:

Q. You told Mr. Stewart that a small manufacturer could not raise or lower a price through the issuance of a price card. Do you remember that?

A. I don't think the question and answer will show that. I don't think you are right on that, Mr. MacIntyre.

Q. In other words, you do not think you answered that question?

A. I don't think the question was put.

Q. Is it not your understanding, then, that Mr. Stewart asked you a question as to whether or not in all of your experience you had found whether a small manufacturer could or could not raise or lower a price through the issuance of a price card, and that you answered such a question?

A. I answered that I didn't have any recollection of doing it.

Trial Examiner Norwood: Wait a minute. The question was ruled out, and the counsel changed it to "did or did not."

Mr. MacIntyre: I am thinking of two questions that were answered previous to that, if Your Honor please. I am trying to find out what the witness means by those

4729 two previous answers.

Trial Examiner Norwood: You will have to show us.

The Witness: Well, may I say—

Trial Examiner Norwood: Proceed. Go ahead.

The Witness: I think I said I did not have any recollec-

tion of any small manufacturer. At the same time I raised the question what is a small manufacturer. I believe that a medium manufacturer at one time issued a card.

Q. Who was that?

A. I think the Enameled Metals Company issued a card at one time. I wouldn't call them a large manufacturer. At least we don't. I don't want to say that. As a competitor of ours they are a pretty good sized manufacturer. But I don't consider them a large manufacturer. We generally put about three of them in that class. I would call them medium. They issued a card at one time.

Q. You recall them having issued a card?

A. Recall the card? I can furnish it to you.

Q. I say, you recall them having issued a card?

A. Yes.

Q. You recall also—

A. And Triangle Company issued a card. I won't call them large, either.

Q. Triangle? Did you say Triangle?

4730 A. Yes. I believe they did. To the best of my recollection, they did.

Q. And it is also your testimony that the National Electric Products Corporation issued a number of cards?

A. Well, I wouldn't say that. They have issued some. So have other manufacturers. You have the cards.

Q. You recall, of course, the Youngstown Sheet & Tube Company issuing cards?

A. Yes, they have issued cards.

Q. And the Fretz-Moon Tube Company?

A. They issued cards.

Q. And General Electric Company?

A. I don't remember their card. They may have issued one. Probably did.

Q. You told Mr. Stewart that West Pittsburgh is in the Youngstown freight area.

A. Yes.

Q. Is it your testimony that Struthers, Ohio, is also in the Youngstown freight area?

A. I am pretty sure it is.

Q. And is it also your testimony that the freight from the Youngstown area to Chicago, Baltimore, Philadelphia, and New York is the same as the freight rate to those points from the Pittsburgh area?

A. No, they are not.

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4731 Mr. Stewart: Just a moment. I submit that that is a matter of record. It is the official tariff of the Interstate Commerce Commission, so why ask this witness that question?

The Witness: They are not the same.

Mr. Stewart: All right.

Mr. MacIntyre: It is also a matter as to what area they are in, as freight areas.

Trial Examiner Norwood: Objection overruled. I will let the answer stand.

Mr. Stewart: The answer was they were not.

By Mr. MacIntyre:

Q. Referring to this Leo P. O'Brien, which is mentioned in Commission's Exhibit 558, which was called to your attention by Mr. Stewart, you have stated that he was a manufacturer's agent selling on commission for you. Is that correct?

A. Well, I call him a manufacturer's representative. He was a representative of the people.

Q. But he represents you?

4732 A. Yes, he represents us in the conduit business.

Q. And sells on commission in doing so?

A. Yes.

Q. Have you given him general instructions to do what he feels is necessary—

A. No.

Q. —to increase the sales of conduit manufactured by you?

A. Do what is necessary, you say?

Q. Yes.

A. No, we have not. We asked him to observe a price, and if he goes below that price he has got to get our consent, which he sometimes does.

Q. But at those prices you have instructed to do all that he feels is necessary to get the business?

A. Yes.

Q. On your conduit?

A. Yes, sure.

Q. Now, calling your attention to Commission's Exhibit 533-A and B—

Mr. Stewart: Here is the original.

Q. Those are photostats of an exhibit which was found in your files by an investigator of the Federal Trade Commission.

A. You mean this (indicating)?

Q. Yes, 533-A and B, two sheets (indicating). Is 4733 that correct?

Mr. Stewart: To save time I will admit that is a photostat of it. That is why I suggested that he use the original.

By Mr. MacIntyre:

Q. Is Commission's Exhibit 533-A and B a photostat of an original document which was found by a Federal Trade Commission investigator in your files?

Mr. Stewart: I think the record already shows that.

Mr. MacIntyre: I want to get that answer so that I can go on to other questions.

Mr. Stewart: All right.

Well, Mr. Garland, to satisfy you, that is a photostat of the document which I showed you?

The Witness: Yes, it is.

By Mr. MacIntyre:

Q. And you recognize on the reverse side of that the handwritten initials in the handwriting of George D. Wick, your attorney?

A. Yes.

Q. In certifications which carry these words: "The undersigned, George Wick, as attorney for Garland Manufacturing Company, admits and agrees that the document or record to which this statement is affixed was pro- 4734 duced from the files of and furnished by the Garland Manufacturing Company;

"The undersigned further admits and agrees that the documents or records to which this statement is affixed is a photostat of a genuine and authentic memorandum from Herbert Blake."

A. Yes.

Q. And you also recall that on the occasion of my visit to the offices of your attorney, Mr. George D. Wick, at the time that he put his initials at the end of that certification on the back of those, which was about August of last year, 1941, you stated to him and to me that, to the best of your knowledge and belief, that memorandum was prepared by Herbert S. Blake. You recall that statement?

A. Yes, I said so at the time, but it was rather hurried, and I don't know whether he prepared it or not. I don't know who prepared it. It had all the appearance of being

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prepared there, and offhand I made that statement, but I couldn't swear to it.

Q. But you do not deny at this time that you made that statement to Mr. Wick and to me at that time?

A. Not at all. Not at all.

Q. How did this document come into your possession and enter your files, Mr. Garland?

A. I don't know. It was not taken from files of my office; it was taken from the factory files.

4735 Q. But files of your company?

A. Yes; the factory files of the company.

Q. And at this time you are unable to testify as to how it was placed in the files of your company?

A. I can't say how it ever got there. It might have been tentative stuff. It might have gone to anybody, as far as I know, after looking into it. I don't know who prepared it.

Mr. MacIntyre: That is all.

Redirect Examination by Mr. Stewart.

Q. Mr. Garland, Mr. MacIntyre asked you at one stage as to whether or not in your experience you had observed that there was uniformity in the price cards, and, as I recall it, you said there was not. Did you mean to make that answer?

A. Well, I meant it as to observance. I imagine there was uniformity. I think—I am pretty sure the cards are uniform.

Q. Had you ever seen this document, 533, prior to the time Mr. MacIntyre showed it to you in Mr. Wick's office. Do you remember ever having seen it?

A. I don't remember ever having seen it. It was taken not from the files of my office; it was taken from other files.

Q. Now, Mr. Garland, I should like to get the O'Brien relationship between your company and O'Brien straight. To what extent does your company control O'Brien's actions, if at all?

4736 Mr. MacIntyre: I object to that.

Trial Examiner Norwood: Objection overruled.

A. We try to control him.

By Mr. Stewart:

Q. Well, to what extent?

A. Well, I suppose we control him about 80 to 90 percent.

Q. Well, I know, but—

A. Every now and then he gets beyond control.

A. All right. In what particular, then?

A. Well, we try and have him observe our price.

Q. Well, is that the extent of the control you try to exercise?

A. We also control him to this extent, that certain business that he may take and send to us we would refuse to take on account of credit, or else we will want the cash, and the order will go elsewhere.

Trial Examiner Norwood: Is he one of your agents under contract?

The Witness: No; I don't believe we have a contract.

Trial Examiner Norwood: You consign stuff to him?

The Witness: Well, he will get a consigned stock account every now and then, but not often, because we have our old time consigned accounts for years.

Trial Examiner Norwood: And you do not con-
4737 sider him your agent?

The Witness: We consider him our representative in sales, because he represents other manufacturers as well. I wouldn't call him an agent. I wouldn't be so broad as that. He is simply a sales representative.

By Mr. Stewart:

Q. Well, in the sale representation, state whether or not it is the fact that the extent of his authority, assuming now he observes your price restriction, is to negotiate a sale for a commission; is that the extent of his authority?

A. Yes.

Mr. Stewart: That is all.

Recross-Examination by Mr. MacIntyre.

Q. You asked him to do what he can to observe that price; is that correct?

A. Yes.

Q. And what other manufacturers does Mr. Leo P. O'Brien represent in addition to yourself?

A. I would have to get a list of them. I don't know.

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Some wire company. I don't know. I know he represents others. I can furnish that information.

Q. Do you know what other conduit that he handles in addition to yours?

A. He doesn't handle any other conduit.

4738 Q. No other conduit?

A. No.

Q. Is it your understanding with him that he shall be the exclusive agent for your own conduit in that territory?

A. Well, we wouldn't have him otherwise.

Q. In other words, you don't want him handling conduit of other people?

A. He doesn't.

Q. And it is your understanding with him that he will not?

A. Oh, yes. He doesn't handle any other conduit.

Mr. MacIntyre: That is all.

Redirect Examination by Mr. Stewart.

Q. Well, Mr. Garland, I direct your attention to the language in Exhibit 558—

Mr. MacIntyre: I object.

Trial Examiner Norwood: Wait. Now, let him finish.

Mr. MacIntyre: I didn't go into that on recross and neither was it gone into on cross, redirect, or recross.

Mr. Stewart: We have been talking about this letter from Leo P. O'Brien.

Mr. MacIntyre: You did on direct.

Mr. Stewart: So did you.

Trial Examiner Norwood: I think that we have exhausted that subject.

4739 Mr. Stewart: I should like to ask one question, and if you sustain the objection all well and good, but I would like the record to show that I have asked the question.

Trial Examiner Norwood: Go ahead. Finish the question.

By Mr. Stewart:

Q. This Exhibit 558 in one paragraph states: "Several projects were discussed as to prices and agreements that had been made but nothing was pinned on those present which was in accordance with our agreement to maintain

card 76 prices on any new project that might come up after our first meeting."

Now, I would like to know whether or not O'Brien had any authority to make any agreement on your behalf to maintain card 76 prices, or what agreements is he talking about, if you know?

A. I don't know. I don't know. Just speaks for itself there, I guess.

Q. Well, were you part of the "our" referred to?

A. "With our agreement," oh, yes. "With our agreement," yes, we are a party to that.

Q. Did you make any agreement to maintain card 76 prices?

A. We all did.

Q. In this meeting, you mean?

A. Oh, I don't know anything about that meeting.

Q. Oh.

4740 A. That meeting is another thing.

Trial Examiner Norwood: Are you through with the witness now?

Mr. Stewart: That is all.

Trial Examiner Norwood: Thank you, Mr. Garland.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. Stewart: Now, Mr. Examiner, on the basis of the testimony of Mr. Garland with reference to Exhibit No. 533, and in the light of the state of the record and reciting the basis on which it was admitted, I move to strike it out, the witness now having under oath repudiated any knowledge as to the authorship of the document. Absolutely the only thing in the record which would make it admissible at all is that Mr. Garland told Mr. MacIntyre that it was prepared by Mr. Blake. Now, as you will recall, in addition to what Mr. Garland says, his lack of knowledge under oath, Mr. Blake absolutely denied authorship and every other witness who should know something about it has testified he never saw the document, and it is evident Mr. Garland never saw it until Mr. MacIntyre showed it to him, so I would like to have the record clear at this point.

Mr. MacIntyre: I oppose the motion, and I oppose it on the strength of the record showing the document up to this minute.

4741 Trial Examiner Norwood: Motion denied. The record will show what it is and how strong it is; that is, what weight it should have.

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Mr. Stewart: Well, I didn't want to leave the record in shape that we had to make a motion to strike out, because, as I recall it, you let it in subject to a duty on Mr. MacIntyre's part to establish its authenticity, and it has absolutely been repudiated.

Trial Examiner Norwood: As I recall, there is some testimoney there showing where this statement—

Mr. Stewart: It came from Mr. Garland's files. There is no question about that, but that doesn't make it admissible.

Trial Examiner Norwood: But I should not like to exclude it without a very careful study.

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 302 and 303.")

Mr. Stewart: Mr. Examiner, Mr. MacIntyre has conceded that Respondents' Exhibits 302 and 303 are documents from the files of the Steelduct Company. He makes no objection to their identification. They being price cards No. 57 and No. 58, I offer them in evidence.

Mr. MacIntyre: I haven't studied them yet.

Mr. Stewart: Oh, I am sorry.

Trial Examiner Norwood: Any objection to the 4742 exhibits?

Mr. MacIntyre: I object to the exhibits, that is, 302 and 303, as irrelevant and immaterial.

Mr. Stewart: I beg your pardon.

Trial Examiner Norwood: Objection overruled.

Receive the exhibits.

RESPONDENTS' EXHIBITS NOS. 302 and 303 were offered and received in evidence.

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 304-A, 304-B, 305- and 306-A to 306-D.")

Mr. Houston: If Your Honor please, I offer in evidence Respondents' Exhibit, for identification, 304-A and B, being price card No. 57 of National Electric Products Corporation, and also Respondents' Exhibit, for identification, being price card No. 58 of National Electric Products Corporation.

Mr. MacIntyre: They are objected to on the same grounds that I objected to 302 and 303.

Mr. Houston: You are not objecting to their authenticity, are you, Mr. MacIntyre?

Mr. MacIntyre: No.

Trial Examiner Norwood: Received as marked. Objection overruled.

RESPONDENTS' EXHIBITS NOS. 304-A, 304-4743 B, and 305 were offered and received in evidence.

Mr. Cleaveland: Mr. Examiner, we should like to offer Respondents' Exhibit, for identification, 306-A through D, being price card No. 61 of Laclede Tube Company, the authenticity of which has been conceded.

Trial Examiner Norwood: Any objection?

Mr. MacIntyre: Same objection to it as to the last two previous offers.

Trial Examiner Norwood: Objection overruled. The exhibits are received in evidence as marked.

RESPONDENTS' EXHIBIT NO. 306-A to 306-D were offered and received in evidence.

Trial Examiner Norwood: Call your witness.

Mr. Bozeman: Mr. Newman.

Trial Examiner Norwood: This witness has been sworn?

Mr. Bozeman: Yes, Your Honor, he has been sworn.

Trial Examiner Norwood: You have been previously sworn?

Mr. Newman: That is right.

A. E. NEWMAN was thereupon called as a witness for the Respondents, and, having been previously sworn, testified further as follows:

4744 *Direct Examination by Mr. Bozeman.*

Q. Mr. Newman, I show you a photostatic copy of Commission's Exhibit 533-A and B. I wish to ask you to please look at that document.

A. Yes, sir.

Q. Mr. Newman, will you state when for the first time you ever saw that memorandum?

A. I saw this memorandum about four or five weeks ago. It was shown to me by you, Mr. Bozeman, here in Washington.

Q. Did you at any time prior to the instance you have just mentioned know anything about the existence of that memorandum?

A. No, sir.

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Q. Mr. Newman, who is Mr. J. R. Whittle?
A. J. R. Whittle is one of my associates.
Q. What position has he held since 1933?
A. He is assistant to the sales manager of Conduit Products Sales.
Q. Mr. Newman, did Mr. Whittle at any time, during the period from 1933 up to the commencement of this litigation, have any authority to make any agreement or commitments on behalf of General Electric Company?
Mr. MacIntyre: I object. There has been no foundation laid either today or on the occasion when this
4745 witness was previously called by Mr. Bozeman to testify for the Respondents to show that he had knowledge of the authorities that were granted by all the people in the General Electric Company and the General Electric Supply Corporation to the different agents and employees of those two organizations.
Mr. Bozeman: Your Honor, it seems to me that Mr. Newman is entitled to state his knowledge on the matter.
Trial Examiner Norwood: Off the record a minute.
(Discussion off the record.)
Trial Examiner Norwood: I will sustain the objection for the time being.

By Mr. Bozeman:
Q. Mr. Newman, is Mr. Whittle one of your assistants?
A. He is.
Q. And has he been one of your assistants ever since you have been head of the department—
A. He has.
Q. —in which you are now working?
A. That is right.
Q. And are you familiar with his duties in his position?
A. I am.
Q. Are you also familiar with the authority which he is authorized to exercise?
A. I am.
Q. Now, did Mr. Whittle at any time during the
4746 period from 1933 to the commencement of this case have any authority to make any agreement or commitment on behalf of General Electric Company?
Mr. MacIntyre: I make no objection to that question if it is limited to the authority that was given by this man to Mr. Whittle.

Trial Examiner Norwood: Now, any authority—
Mr. MacIntyre: Any other knowledge—
Trial Examiner Norwood: —he knows of from this company.
Mr. MacIntyre: So far as it is limited to his knowledge, but that question doesn't so limit it.
Trial Examiner Norwood: Go ahead. Answer the question.
He is asking as to his knowledge. Go ahead.
Mr. Bozeman: I will withdraw that question.
Trial Examiner Norwood: I think that question is all right.
All right. Question withdrawn.
Mr. Bozeman: Will you read the question, please, Mr. Stenographer?
Trial Examiner Norwood: Read it.
Off the record.
(Discussion off the record.)
(Last question read.)
4747 Mr. MacIntyre: Now, as that was modified by you—
Trial Examiner Norwood: As to his own knowledge.
Mr. MacIntyre: —I have no objection.
Trial Examiner Norwood: Was that withdrawn or not?
Mr. Bozeman: No. I would like to have an answer to the question.
Trial Examiner Norwood: Answer the question of your own knowledge.
A. Mr. Whittle has no authority to make any agreements or commitments without specific authority from me.

By Mr. Bozeman:

Q. Now, Mr. Newman, the record shows that Mr. Whittle attended a meeting of the Rigid Steel Conduit Association held at New York on January 27, 1937. Now, did you instruct or authorize Mr. Whittle to attend that meeting?
A. I instructed Mr. Whittle to attend several meetings, and that might have been one of them. Mr. Whittle is told by me what meetings he can attend.
Q. To the best of your recollection, did you give Mr.

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Whittle any special instructions for his guidance at the meeting I have just mentioned?

A. I never give Mr. Whittle any instructions in regard to any meetings he attends.

Q. Well, has Mr. Whittle ever been under any general or standing instructions regarding his attendance at
4748 meetings of the Association?

A. Yes. He has standing instructions from me as to just what his position is in any meeting which he attends.

Q. Will you please describe the general nature of those standing instructions?

A. Mr. Whittle is sent there purely to represent the company and listen to the discussions and make notes particularly of any phases of the technical information that we may be interested in.

Q. To the best of your recollection, did Mr. Whittle make any report to you regarding the meeting of January 27, 1937?

A. No, he did not.

Q. Did Mr. Whittle ever report to you that there had been any discussion of prices of rigid steel conduit at any meeting of the Association attended by him?

A. No, sir.

Q. Or that any agreements or understandings had been reached on prices of conduit at any meeting attended by him?

A. You mean Mr. Whittle making any agreement?

Q. Did he report to you that any agreement or understanding had been reached on prices at any meeting attended by him?

A. No, sir. No, sir; he has never reported to me to that effect.

Q. Mr. Newman, this morning you heard references during this hearing to some 15-day waiting period in
4749 the case of price changes on rigid steel conduit. Did General Electric Company have any such policy in regard to its price changes?

A. No, sir. I have already testified that we sent out a telegram on every price change, and that the price change becomes effective as soon as that telegram goes out. Furthermore, that we immediately call for a consigned stock report covering the sales out of consigned stock for that period.

Q. Mr. Newman, is New Kensington, Pa., in the Pittsburgh freight rate area?

A. Yes, sir.

Q. Will you state whether or not freight rates from New Kinsington to various destinations outside that area are the same as freight rates from Pittsburgh to the same destinations?

Mr. MacIntyre: I object. This witness clearly demonstrated during the cross-examination of him the previous time that he was called by Mr. Bozeman to testify for the Respondents that he is not competent to testify as to these various freight rates; that he had made no study of them; it was not his duty to handle them; he did not know their application.

Mr. Bozeman: Well, let me ask him one preliminary question.

Trial Examiner Norwood: Yes.

By Mr. Bozeman:

4750 Q. Mr. Newman, have you made any study which would enable you to answer the question that has just been put to you?

A. Yes, sir.

Q. And then will you please answer the question as previously asked?

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. The matter was taken up with our traffic department, and they gave us freight rates from New Kensington and Pittsburgh to various destinations.

Mr. MacIntyre: Now, if Your Honor please, I object, on the basis of the statement just made by the witness as to how he has secured any information on this, to his answering the question as to what the rates are. It is obvious that any statement by him as to what they are would be hearsay based information which freight rate men passed to him.

Trial Examiner Norwood: Well, it is based on information that came to him in the course of business, and inasmuch as they are figures that are known and can be verified, there is no reason why he should not be permitted to put them in.

Objection overruled.

By Mr. Bozeman:

Q. I will repeat the question, Mr. Newman. Will you state whether or not freight rates from New Kensing-
4751 ton to various destinations outside that area are the same as freight rates from Pittsburgh to the same destinations?

A. That is right.

Q. Mr. Newman, based on your experience in the industry, will you state whether manufacturers commonly make sales through consigned stock agents, shipments pursuant to which are made directly from the mills to the place of use?

A. Yes.

Q. Will you state whether such direct shipments generally occur in connection with large construction projects?

A. They do.

Q. In your experience in the conduit business, have you observed, and do you know whether or not it is a matter of importance to the contractor buying conduit for his job for delivery from the mill in carload lots to receive deliveries at or immediately before the time when he is ready to install the conduit?

A. Yes, sir.

Q. Why is the proper scheduling of such deliveries important?

A. Well, there are a number of reasons. First, the material must be on the job so as to avoid delaying the electricians who are installing the conduit and interfering with other trades people. Also the fact that it eliminates the necessity of warehousing on the part of the contractor,
4752 and, if you wish, Mr. Bozeman, I can give you three good concrete illustrations beyond that.

Q. Mr. Newman, who are the chief customers of conduit?

A. Contractors, electrical contractors.

Q. Based on your experience, do you know of any instance, Mr. Newman, where a small manufacturer has lowered the general price level of conduit by issuing a price card carrying prices below the prices currently in effect or currently published?

A. If I understand your question, a small manufacturer reducing the price?

Q. Do you know of any instance where a small manufacturer has effected a lowering of the general price level of conduit by issuing a price card carying prices below the prices currently published?

A. I think there has been one or two cases where that has happened.

Q. So your answer to the question, then, is "yes"?

A. Yes.

Q. Now, Mr. Newman, do you know of any instance in which any manufacturer, large or small, has initiated an increase in prices which became effective unless it has been followed by all other manufacturers?

A. I have never known of any case.

Q. Mr. Newman, you previously testified in this case, I believe, that one of the duties of your position is to—

4753 has been and is to keep informed of the status of the market for the sale of General Electric conduit?

A. That is right.

Q. Now, will you state briefly how you keep informed on that subject?

A. Our salesmen, our district managers, and our sales agents or distributor agents write, telegraph, or telephone stating specific information regarding certain prices being quoted by other manufacturers on a given job, or the conditions, the price conditions, in their territory.

Q. Were some of the reports that you have mentioned addressed to you personally?

A. They have been.

4754 Q. Mr. Newman, will you describe very generally the character of the reports to which you have referred?

A. These reports from the sources which I have just mentioned contained information regarding the market conditions in the territory, and in some cases specific information on certain projects.

Q. Mr. Newman, did you personally examine and study the reports which were addressed to you personally?

A. I did.

Q. And did you in the operation of your business, that is, in the discharge of your duties for General Electric Company, rely upon the reports that have just been mentioned?

A. I had to.

4755 (Documents were thereupon marked for identification "Respondents' Exhibits Nos. 307, 308, 309-A, 309-B, 310, 311, 312, 313, 314, 315, 316, 317-A and 317-B, and 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, and 330.")

Trial Examiner Norwood: Go ahead.

By Mr. Bozeman:

Q. Mr. Newman, I show you Respondent's Exhibits, for identification, 307 to 330, inclusive, and ask you whether they are some of the reports to which you have referred?

A. Yes, sir; they are.

Q. And is it correct that each of these letters is addressed to you personally?

A. Well, not—all except one which I wrote to another—to one of my associates. All the rest of them are addressed to me.

Q. And did you personally examine each and every one of these documents—

4756 A. Yes.

Q. —at the time that it was received?

A. Yes, sir.

Q. And, Mr. Newman, I also show you Respondents' Exhibits, for identification, 224, 230-A and B, 231, 232-B and C, 233, 234-A and B, 236-A, B, C, and D, 237-A, B, and C, and 241-A and B, and ask you whether your last two answers would apply with respect to those papers?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

A. Yes, sir.

Mr. Bozeman: Now, if Your Honor please, I offer all of these two groups of papers in evidence. They all consist of letters written to and addressed to Mr. Newman personally. He has testified here that he examined them personally, and they are offered for the purpose of laying—of showing in part the material on which he acted in the making of his decisions in his position with the General Electric Company.

Trial Examiner Norwood: Any objection?

Mr. MacIntyre: Yes. I make the same objection to this 307, Respondents' Exhibits 307 to 330, inclusive, and to 224, 230, 231, 233, 234, 236, 237, and 241, as I made to the 224 to 241, and others included in that group, when they were offered before, and I submit that Your Honor should

4757 give the same ruling to them when they are reoffered here at this time as you made upon them when they were offered before.

Trial Examiner Norwood: Well, as I understand it,—

Mr. MacIntyre: Of course, this 307 to 330 were not offered before, but they are in the same class as those which were offered and rejected previously. They are, as

Your Honor will recall, tabulations for the most part of what purport to be bids which were allegedly opened and read out at some hearing, and which were tabulated by the writers of these letters and forwarded to this witness. Some of them purport to be tabulations made up by people who have been on the stand and testified since this 224 to 241 were offered previously.

I call Your Honor's attention particularly in that respect to 236 and 237 purporting to be written by Mr. L. E. Latham. Well, since they were offered and rejected Mr. Latham has been on the stand and testified, but they were never brought to his attention, and he was never asked about them at the time that he was testifying.

The same objections, of course, go to all of these, 307 to 330; that is, that they are tabulations or purport to be tabulations of bids which allegedly were opened at various places throughout the country and by people from contractors to the Government, all the way up the line, none of whom have been called or the bids brought to any place where we could examine them and check the statements
4758 contained in these letters. The only letter in here which was written by the witness here before us is Respondents' Exhibit 312, and that was signed by someone else for him and is transmitting to someone else in the General Electric organization.

Trial Examiner Norwood: But all the other letters he testified as to having received; didn't he?

Mr. MacIntyre: Yes, they were received in his office. But all of them are of the class that I have just stated. Mr. Van Der Beek, for example, wrote many of these letters, an employee of the General Electric Company. Mr. Van Der Beek today is, as I understand it, in New York making many, many tabulations of bids, and if he were to send those tabulations of bids from the place where he is making them to this witness it wouldn't make them any more admissible than these were made admissible by the fact that Mr. Van Der Beek and others in the organization ran around all over the country and had statements made to them by other people and passed them along to this witness.

I call Your Honor's particular attention to—that is, attention particularly to one of the exhibits—and it is fairly typical of the others—311, for identification. This statement appears in it: "Harry also states that National and Garland have solicited his business recently." Just a mat-

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ter of pure gossip and hearsay. They are all objected to for all of the reasons that have heretofore been stated
4759 and stated today, and I believe that your ruling should be the same as it was previously on these documents.

Mr. Bozeman: May I reply briefly?

Trial Examiner Norwood: Yes, surely.

Mr. Bozeman: Your Honor please, I think there is a substantial difference between this proffer and the proffer made when this witness was on the stand in Brooklyn, in that all these letters, with one sole exception, were written to and addressed to Mr. Newman; he has testified that he read them personally; further, that in making his decisions in the discharge of his duty with the General Electric Company he acted and relied upon these letters, and I submit that it is utterly immaterial whether the contents of those letters are true and correct. He is a defendant here as well as a representative of another defendant, the company itself. We are entitled to put into evidence the material—this is only part of the material, by the way—on which he acted from day to day in the discharge of his duties, and in closing I would like to say they are not offered for the truth of the matter asserted. They are offered for the limited purpose of showing part of the material on which Mr. Newman acted, and I think Mr. MacIntyre is giving an erroneous interpretation of the offer when he analgizes this to the possible proffer in the same manner as the reports now being made by Mr. Van Der Beek.

Trial Examiner Norwood: Those tabulations in
4760 307 to 330 are clear so as to really show the Commission what this witness did receive and act upon. I would be inclined to admit them with the qualifications. I will have to examine them for that, because, as I remember it, I excluded those others chiefly because of the condition of those tabulations. They were not intelligible to me and would have taken a great deal of study to find out just what these people did receive and act upon, so I shall reserve the ruling until after the lunch hour, and in the meantime I will examine them.

Now, I just want to examine the ones from 307 to 330. I ruled on those previous ones.

Mr. Bozeman: I would like to say, Your Honor, that the previous ones consist of the documents which were addressed to Mr. Newman personally. They have exactly the same status as the ones from 307 to 330, inclusive, and this

is only part of the material on which Mr. Newman acted, and as to these tabulations of bids I would like to say this: I think in practically every instance they are attached to a letter that came directly to Mr. Newman, that was addressed to him, and as to which he testified that he relied in making decisions and in acting for the company.

Trial Examiner Norwood: Well, I ruled on that first batch, but I will look it over.

Mr. Gilpatric: If I may add one observation, Your Honor, that Mr. Newman now being on the stand,
4761 being in a position to be examined by Mr. MacIntyre, or by Your Honor if there is any question of ambiguity, he certainly can clear it up. I think the situation is different from the original offer made in that respect.

Mr. MacIntyre: There is no information which is any different which was prepared by this witness. None of them. Not even the letter which was purported to be written by his office. It carries a restatement of what is contained in one of the other letters written to him.

Mr. Bozeman: Let me say, Mr. MacIntyre, these documents are not being offered for the truth of the matter asserted. You know the basis, the purpose, for which they are being offered. I think you are being unfair in making that particular form of objection.

Trial Examiner Norwood: I am willing to take, for the purpose of showing the Commission what these companies received and acted upon, a representative number of these. I don't say that it is necessary to put in all these; just those which are clear as to their meaning, clear as to what meaning they conveyed to the recipients. So I will reserve the ruling, and you may proceed with the examination.

Mr. Bozeman: That is all I have, Your Honor.

Mr. Austin: May we go off the record a minute, Your Honor?

Trial Examiner Norwood: Yes. Off the record.
4762 (Discussion off the record.)

Trial Examiner Norwood: Now, the objection is overruled as to the following exhibits, which are received with the condition stated by the counsel, that they are not received to show the truth of the statements contained therein, but to show the information which the witness received.

Those received in evidence are as follows: Respondents' Exhibits, for identification, 224, 231, 233, 234-A and

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B, 236-A to D, inclusive, 237-A, B, C, and 241-A and B, and 307 to 330, inclusive, as marked. Some of them have additional pages which are lettered there. The Reporter will list them according to their letters, and so forth.

Now, the objection is sustained as to the other exhibits proffered.

RESPONDENTS' EXHIBITS NOS. 224, 231, 233, 234-A and 234-B, 236-A to 236-D, inclusive, 237-A, 237-B, and 237-C, 241-A and 241-B, and 307, 308, 309-A and 309-B, 310, 311, 312, 313, 314, 315, 316, 317-A and 317-B, and 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, and 330, were offered and received in evidence.

Trial Examiner Norwood: Proceed. Examine.

Cross-Examination by Mr. MacIntyre.

4763 Q. Mr. Newman, have you made an examination of any freight rates since you testified previously in this hearing and as to how they apply on conduit shipments from New Kensington and Pittsburgh to any destination?

A. I had that done, Mr. MacIntyre, by one of my associates. I asked him to do it.

Q. Have you made any examination of any freight rates at all for the purpose of making the determination in arriving at the result that you testified about on direct examination?

A. I didn't make any personally; no, sir.

Q. All that you testified about on direct examination, then, is based upon information that was given to you by others?

A. Information given to me by people who come under me and are under my supervision.

Q. And you had them to look that up to give it to you in preparation for further testimony in this case which you have given this morning; is that correct?

A. They had—I asked them to take that matter up with the traffic department and get this information for me; yes, sir.

Q. For using it in your testimony here this morning?

A. No, not necessarily. I want to make certain that I know a little bit more about freight rates.

Q. And for your use in the testimony here this morning? Wasn't that the thing that prompted you to have that inquiry made?

4764 A. Well, if I needed it I wanted it, and I wanted the information for my own use.

Q. Didn't your attorneys tell you to have that inquiry made so that you could thereby be informed for the purposes of testifying here this morning?

A. No, sir; my attorney did not tell me anything.

Q. You did that on your own initiative?

A. Yes, sir.

Q. And with the thought that you could use it in your testimony here this morning; is that correct?

A. No, sir.

Q. You had no thought at all when you had this inquiry made that you would use it in this testimony here this morning?

A. My thought possibly?

Q. Yes.

A. I had the thought, possibly, yes.

Q. Don't you know whether you had that thought or not?

A. The reason for making the study, Mr. MacIntyre, was, you questioned me so much before about freight rates that I thought I would find out about it, and I had one of my associates get the information for me. That is the only reason I had it done.

Q. And you learned through that information, you say, about freight rates.

A. For certain locations; yes, sir.

Q. Now, will you please tell me whether or not
4765 the freight rate from New Kensington, Pa., to Moundsville, W. Va., is the same as the freight rate from Ambridge, Pa.?

A. I didn't have that checked, Mr. MacIntyre. What I was interested in, if I may explain, was whether to certain locations the freight rate from New Kensington, which I have always known to be in the Pittsburgh area, was the same as it was from Pittsburgh to certain locations—certain destinations. I had those checked.

Trial Examiner Norwood: Off the record.

Finish your question and answer.

(Discussion off the record.)

Trial Examiner Norwood: We will recess until 1:30, I think. We will reconvene in Room 388, Third Floor, at the opposite end from our old hearing room.

(Whereupon, at 12:20 o'clock p. m., a recess was taken until 1:30 o'clock p. m. of the same day.)

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4766 Afternoon Session.

1:30 P. M.
Room 388.

Trial Examiner Norwood: Are you ready to go ahead? Proceed.

A. E. NEWMAN resumed the stand and testified further as follows:

Cross-Examination (Resumed) by Mr. MacIntyre.

Q. At the time we adjourned just before lunch, Mr. Newman, you were answering a question of mine concerning freight rates out of Pittsburgh and New Kensington. Do you recall that?

A. Yes, sir.

Q. I believe you told me at that time that you do not know whether the freight rates from New Kensington, Pa., and from Pittsburgh, Pa., to Moundsville, W. Va. are the same.

A. That is right. That is the answer I gave.

Q. That is, you do not know?

A. That is right.

Q. And is your answer the same with respect to rates from New Kensington and Pittsburgh to West Pittsburgh?

A. My answer would be the same in that case; yes, sir.

Q. That is, that you do not know?

A. I do not know.

Q. And is your answer also that you do not know
4767 concerning the rates between New Kensington—or from New Kensington and Pittsburgh to Struthers, Ohio, or Youngstown, Ohio?

A. There was one check I made, and I am not sure whether it was Struthers, Youngstown, or Cleveland. There was one that I checked, and the rate in that case from Pittsburgh and New Kensington was the same as to that point in Ohio.

Q. Well, what is your testimony concerning Youngstown or Struthers?

A. I would not say definitely that I checked either one, but I did check one point in Ohio.

Q. That is, you do not know about the application of the rates to Youngstown, though?

A. No, sir.

Q. What is your answer as to the freight rates from New Kensington and Pittsburgh to Butler? Are they the same? That is Butler, Pa.

A. I can't say definitely, Mr. MacIntyre, and I will tell you why, if I may. I had checked with one of my associates about seven or eight different points in Pennsylvania, some in Ohio, some in Kentucky, and we found in those cases that the freight rates in each case were the same from Pittsburgh as they were from New Kensington.

Q. How many points did you so check?

A. Twenty.

Q. Can you testify now whether or not the rates
4768 from New Kensington and from Pittsburgh to McKees Rocks, Pa., are the same?

A. No, I cannot.

Q. Can you tell us whether or not the rates are the same from New Kensington, Pa., and Pittsburgh to Homestead?

A. I did not check any location as close as that to Pittsburgh, but—

Trial Examiner Norwood: Can you tell us with reference to any of the other points?

The Witness: Yes, sir. I had checked points in Altoona, Williamsport, Wilkes-Barre, and several other points in the State of Pennsylvania, and we found in each case that the rate was the same whether it was Pittsburgh or New Kensington.

Trial Examiner Norwood: And you do not know the rates to any other points?

The Witness: In the State of Pennsylvania?

Trial Examiner Norwood: Yes.

The Witness: There might have been two or three others. I do not recall any more.

Trial Examiner Norwood: I just want to know if that is the extent of your knowledge as to the rates.

The Witness: We checked seven or eight different locations.

Trial Examiner Norwood: You have told us about
4769 that, haven't you?

The Witness: Yes, sir.

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Trial Examiner Norwood: You do not know about any other rates; is that right?

The Witness: We checked one to Louisville, Ky., and Birmingham, Ala.

Trial Examiner Norwood: They were the same?

The Witness: They were the same from New Kensington and Pittsburgh; yes, sir.

By Mr. MacIntyre:

Q. Why didn't you have the rates checked as applying from Pittsburgh and New Kensington to these various towns which have other conduit mills which I have just called your attention to, such as Struthers, Ohio, Moundsville, W. Va., and points like that?

A. I don't know whether I have made myself clear this morning, Mr. McIntyre, but you aroused my curiosity the last time I was on the witness stand when you got to the Pittsburgh freight rates, and I just told my people to get about twenty points in various States and check for me for my own personal information what difference, if any, there was in the freight rate between Pittsburgh and New Kensington, and they took several States,—Pennsylvania, Alabama, Kentucky,—and they spot-checked for me. Now, maybe I have not satisfied my curiosity.

4770 Q. Your curiosity, then, did not call for you to have these checks made from one of these cities that have mills in them other than from Pittsburgh or New Kensington?

A. No.

Q. You were not interested in any of those?

A. Not necessarily. I just wanted to see what the general situation was regarding freight rates from Pittsburgh and New Kensington.

Q. In other words, up till this time you have not interested yourself in the rates applying from Youngstown to Pittsburgh, or from Struthers, Ohio, to Pittsburgh, the location of the Youngstown Sheet & Tube Company's conduit mill, to inquire as to what the rate is, have you?

A. No, sir.

Q. And the same answer is true as to all these other points I just called your attention to and you told me you did not know the rate?

A. That is right.

Q. Is it your testimony at this time, Mr. Newman, that

your company and other conduit manufacturers do not use the practice, or engage in the practice, that is, the general practice, of permitting buyers of conduit, jobbers, contractors, to place orders for delivery within 15 days thereafter; that is, open orders, without entering into any express written contracts and get price protection in that period of time?

4771 A. I do not know that that was the question put to me this morning, Mr. MacIntyre.

Q. I am putting the question to you now—that question.

A. The answer I gave this morning, Mr. MacIntyre, was just the policy of the General Electric Company, and our policy in the case of any price change in regard to our agents under our agency agreement was to the effect that the minute we send out our telegram that price become effective.

Q. Is it your testimony that the minute before sent out that telegram, that if you gave a quotation to one of your jobbers, or through one of your jobbers to a contractor, and that you received a call on that to the effect that they were sending you an order and wanted protection for shipment within 15 days, that you have not given such protection?

A. Oh, no, I did not say that.

Q. Well, isn't the policy of your company to give protection under such circumstances?

A. On specific jobs we protect a price quotation for a given number of days.

Q. For 15 days, isn't it?

A. Sometimes. It depends upon conditions. Some may be 30 days.

Trial Examiner Norwood: Well, aren't specific jobs protected according to your contract?

The Witness: Yes, sir.

4772 Trial Examiner Norwood: Now, generally, when you raise a price do you ship to your customers at the old price for 15 days?

The Witness: No, sir; we do not.

By Mr. MacIntyre:

Q. If he has asked for coverage on a number of carloads just at the time that you are making a price change, you will permit him to have that shipped out in 15 days at the price that was prevailing when you gave him the quotation, which he accepted, wouldn't you?

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A. If who asked for the protection?

Q. I am talking about a jobber or contractor—through a contractor.

A. We do not deal with the contractor; we deal with the contractor through agents, and if our agent informs us that he has quoted a price prior to our advance on a specific building job, we will protect that quotation, and that is as far as we go.

Q. And it is your testimony here at this time that you do not accept orders aside from specific building contracts on which you permit shipments, that is, up to and including 15 days from the date of that acceptance, at the price prevailing at the time the order was accepted?

A. To the best of my knowledge, that is what we do; yes, sir.

4773 Q. Is it your testimony that you do not permit that?

A. Now, wait a minute. It is possible, Mr. MacIntyre, that our agents may do something we don't know about. Now, I cannot—it is just a physical impossibility for me or anybody else covering 200 agents to police 200 agents. That agent may, directly or indirectly, give us some information which would indicate to us that it is for a job, and yet we would have to take that agent's word, and in that case we would ship; yes, sir.

Q. Well, let us take a specific example. One of your buyers, one of your customers, with an understanding that there is likely to be a price advance in conduit, places this morning an order with you for two carloads and asks for delivery within the next 15 days, and the price advance occurs, just as he anticipated, today, this afternoon, after you had taken that order.

Is it your testimony, then, that you would not ship unless he had a specific building contract with your covering those two carloads at the price before the advance?

A. I did not say specific building contracts, Mr. MacIntyre. I said it might indicate on that order that it covers a building. I testified before that we get orders from our agents on which they stipulate that that material for that order may be for a job. Now, unless we police every one of those orders, we don't know whether it goes on that job.

4774 Q. That does not answer my question, Mr. Newman.

Mr. MacIntyre: Please read the question to him.
Trial Examiner Norwood: Read it.
(Question read.)
Trial Examiner Norwood: I think you can answer that.
The Witness: Yes, I think I can.
A. Yes, we would fill that order, Mr. MacIntyre.

By Mr. MacIntyre:

Q. Isn't it your practice to fill such orders and hasn't it been your practice for years to fill orders under such circumstances?

A. We never, as far I know, turned me down, so I think that answers your question.

Q. Hasn't it been your practice to fill those orders under those circumstances?

A. Yes, sir.

Q. And with your deep knowledge and wide knowledge of how it is done in the industry by others, isn't it your experience that others do the same thing; that is, other conduit manufacturers?

A. Well, I can't speak for others, except I can express an opinion.

Q. You never had any information as to what your competitors were doing in that respect?

4775 A. Oh, yes, I have had information.

Q. And that information is to what effect?

A. Information comes from our salesmen, our district managers—

Trial Examiner Norwood: Now, he asked you what the information was.

The Witness: That manufacturers had taken order prior to a price advance, but I can't answer—or cannot answer when that material was shipped.

Trial Examiner Norwood: Taken orders for future delivery prior to the price advance?

The Witness: Yes, sir.

By Mr. MacIntyre:

Q. And without it being for use on a specific job; isn't that correct?

A. Yes. Occasionally, that is correct.

Q. Now, you told Mr. Bozeman this morning that in one or two instances that you can recall small manufacturers had lowered the general price structure through the issuance of price cards. You recall that testimony?

A. Yes, sir.

Q. Will you please name those manufacturers that were involved in that one or these two instances?

A. Any testimony I give now is a hazy recollection of what I recall. I have got a recollection, but I can't
4776 recall the date or the card number.

Trial Examiner Norwood: Well, wait a minute. He did not ask you that. He asked you if you could recall those names.

The Witness: Well, I recall one case—that is the one I am thinking of—where I believe Walker Brothers reduced the price.

By Mr. MacIntyre:

Q. Can you recall any other?

A. I can recall one case where a manufacturer—and I assume he is a small manufacturer, smaller than General Electric Company—increased the price.

Q. Who was that?

A. Enameled Metals.

Q. Those are the two instances that you had in mind when you answered Mr. Bozeman's question this morning?

A. Those are two; yes, sir.

Q. And you can't recall any other instances where what you would term to be a small manufacturer tampered with the price structure in general, can you?

Mr. Gilpatric: I object to the question. There is nothing in the record about tampering with the price structure.

Trial Examiner Norwood: Objection sustained.

By Mr. MacIntyre:

Q. You can't recall, then, any other instances
4777 where the small manufacturers, as you term them, moved the general price structure up or down through the issuance of price cards; is that correct?

A. Not from memory; no, sir.

Q. Now, you testified this morning about Mr. Whittle's attendance at a meeting of representatives of members of the Rigid Steel Conduit Association in New York on January 27, 1937. Do you recall the testimony?

A. Yes.

Q. Did you attend that meeting?

A. I don't think I did; no, sir.

Q. Who else attended it in addition to Mr. Whittle?

A. I was not there, so I can't tell you.

Q. Can you tell us anything else about the meeting than what you testified about this morning?

A. No, sir.

Trial Examiner Norwood: Did Mr. Whittle tell you who was there?

The Witness: Sir?

Trial Examiner Norwood: Did Mr. Whittle tell you who was there?

The Witness: No, sir; he did not. He did not make a report after he got back.

By Mr. MacIntyre:

Q. You have no way of knowing, then, what took 4778 place at the meeting?

A. No, sir; unless something important took place, in which case Mr. Whittle, I am sure, would have reported back to me.

Q. How many reports have you received from all sources, that is, written reports, addressed to you in your present capacity or in any capacity of the General Electric Company, concerning the competitive conditions in the field?

A. Over any specific period of time, Mr. MacIntyre?

Q. Well, over the last four years.

A. Well, any answer I give on that question would be a guess. I would say probably several thousand of them.

Q. Those have not been destroyed, have they?

A. Yes. I would not say all of them; some of them have.

Q. Why were they destroyed?

A. Well, those reports, as you refer to them, are only good as far as we are concerned only for a certain period of time. Some we have kept and some we have destroyed. Some we take no stock in.

Q. What standard did you use to determine what shall be destroyed and what shall not as of a particular date dealing with competitive conditions in the field?

A. Well, first, the source it comes from; second, the source they get their information from; third, whether we are interested in the conditions existing at that time.

Q. Do you also consider the nature of the report 4779 as one of the standards?

A. Usually all three of them. We use them as a measuring stick.

Q. You do use that as one of the measuring sticks?

A. Any one of the three, and maybe all three.

Q. Would you say that all three of those measuring sticks played a part in the decision of your company to keep in its files and to produce here the exhibits which were received in evidence this morning, bearing Respondents' Exhibits Nos. 224 to 241 and 307 to 330?

The Witness: I would like that question read again, please.

Trial Examiner Norwood: Read it.

(Question read.)

A. Not necessarily. We may get a report today, Mr. MacIntyre—I may get a report today that, after I read it, I am satisfied it does not mean anything, and we may destroy it right there.

By Mr. MacIntyre:

Q. Well, you say "not necessarily." Well, I am asking you whether or not that they did, as to these which were produced this morning, play a part, that is, as to whether or not those three factors—

Mr. Swope: Mr. Examiner, I would like to have the question separated, as to what was kept and as to the
4780 determination of what to produce here.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

Answer that.

A. Those reports, Mr. MacIntyre, were important to us, so we kept them.

By Mr. MacIntyre:

Q. That does not answer the question, Mr. Newman. I asked you whether or not these three standards by which you determined whether or not they were important to you played a part in your decision to keep them and to produce them here this morning?

A. Well, Mr. MacIntyre, I am afraid I don't understand the question, for this reason: Some of the reports go back all the way to 1935, I believe, or thereabouts, and at that time certainly I had no foresight that there was going to be a complaint against the General Electric Company.

Trial Examiner Norwood: No. You were the one who retained those.

The Witness: That is right.

Trial Examiner Norwood: Now, did the standard you

have given there determine whether or not to retain these and throw away the others?

Mr. Gilpatric: Mr. Examiner, that was the point
4781 of Mr. Swope's objection, that the question assumes that when Mr. Newman retained the documents he retained them for the purpose of having them produced here.

Trial Examiner Norwood: No. No. He simply asked him if those were the reasons he kept them. He said he kept some for some reasons and some for others. Now, he is asking him whether those were the reasons why he kept these exhibits here, which are specified.

Now, you can tell us that.

The Witness: Yes, I can, Your Honor, but I did not understand the question to read that way.

By Mr. MacIntyre:

Q. What is your answer on that?

A. Those are the standards we use in retaining copies for our files; yes, sir.

Q. And by what standard did you select these from any others that you have in your files today?

A. We have a lot of others which are not addressed to me, Mr. MacIntyre.

Q. Well, do you have some others that are addressed to you?

A. I can't answer that offhand. We may have, but I doubt it, and I will explain why. Today some of the information regarding prices in various territory is addressed to one of my assistants, and all that I understand that we have here are those letters which are addressed to me personally.

4782 Trial Examiner Norwood: And these are all the letters that were addressed to you?

The Witness: As far as I know.

Mr. Swope: We had more this morning, but you asked me to eliminate some of them, and we introduced a limited number.

Trial Examiner Norwood: The question goes as to all that you brought here.

By Mr. MacIntyre:

Q. Well, out of these thousands that you received addressed to you, the ones that were produced here this morning are the only ones saved by your company?

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A. When I am talking about thousands I am talking about a period of nine years.

Q. Yes, I said three or four or five years.

Trial Examiner Norwood: Is that a fact?

The Witness: Yes, sir.

Mr. MacIntyre: You said several thousand, I believe.

The Witness: Call it two.

By Mr. MacIntyre:

Q. Well, how many—what is your estimate as to how many have been addressed to you inside of the last 2½ or 3 years?

A. Oh, I would say probably ten or fifteen percent. The rest of them I have seen.

Q. What do you mean by ten or fifteen percent? Of what?

4783 A. Well, if you want it in figures, again it is an estimate—

Q. That is, these you have produced here constitute 10 or 15 percent of all that have been addressed to you in the last 2½ or 3 years?

Mr. Bozeman: No.

Mr. MacIntyre: I want to know—

Trial Examiner Norwood: Wait a minute.

Is there an objection?

Mr. Bozeman: Yes. I object to the form of the question, because I think it inaccurately states what Mr. Newman said.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Now, the objection is overruled.

Answer whether or not they do so constitute 15 percent or 10 percent of all that have been addressed to you.

The Witness: These letters here?

Trial Examiner Norwood: Yes.

The Witness: No. These represent practically all those which we had in our files, Your Honor, which were addressed to me personally.

Trial Examiner Norwood: Well, he is not asking you about the files; he is asking you about the letters you received, and whether or not this is approximately 15

4784 percent of the whole. Give us your estimate about that.

The Witness: I would not say—probably these are half of them, Mr. MacIntyre.

By Mr. MacIntyre:

Q. Of all letters that were addressed to you from the trade or from anyone else concerning competitive conditions in the field over the last three years?

A. Addressed to me personally.

Q. Yes.

A. That is right.

Q. And the other half have been destroyed?

A. No, I did not say that. I said the other half might have been addressed to someone else, but I had seen them. But, of course, I go right back again to the statement which I made before: In all cases we did not keep every copy, because the information contained in those letters might not have been important enough to keep in our files.

Q. Now, when you say the other half might have been addressed to someone else, do you mean by that to say that this is, in this half, all that were addressed to you in that period of time?

A. No, I did not say that.

Q. Well, what percent of the total that were addressed to you in the last four years do these exhibits which you have produced here this morning represent?

4785 A. I can't answer that question. I don't know.

Q. You do not have any idea?

A. Only a guess is all I can give you. If you want that, I will give it to you.

Q. Well, what is your best thought on it?

Trial Examiner Norwood: Do you want him to guess now?

Mr. MacIntyre: Yes, I will take it as a guess.

Trial Examiner Norwood: All right.

Mr. MacIntyre: He is better able to guess than I am on that point.

Trial Examiner Norwood: All right.

A. Am I to include, Mr. MacIntyre, those that I have destroyed also?

By Mr. MacIntyre:

Q. Yes.

A. Well, then, in the last four years, including those which were destroyed, because to my way of thinking they had no value—

Q. Well, all you destroyed for any reason, that were addressed to you.

A. I would say better than 50 percent were addressed to me.

Q. And what percent of those that were addressed to you do these constitute which you produced here this morning in that period of time?

A. There again I have got to guess.

4786 Q. Well, give us your best guess on it.

A. I don't know of what value it is, but I will give it to you.

I will say probably these represent—these on the table probably represent 15 or 20 percent.

Q. That is, the exhibits you produced here this morning represent 15 or 20 percent?

A. That is just picking a figure out of the air, Mr. MacIntyre.

Q. These you produced here this morning represent 15 or 20 percent of those which you received during that period addressed to you?

A. Yes.

Mr. MacIntyre: I believe that is all.

Mr. Bozeman: May I have just a minute?

(Pause.)

Mr. Bozeman: No other questions, Your Honor.

Trial Examiner Norwood: Thank you, Mr. Newman.

The Witness: Thank you.

Trial Examiner Norwood: The witness is discharged.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

4787 Mr. Gilpatric: So far as I know, the Respondents have completed their proof, with the exception of proof which we intend to offer on two subjects. One is public bidding and the other is expert evidence through economic witnesses.

4792 Mr. MacIntyre: Now, on this other point: I am 4793 prepared at this session this afternoon to complete all offers of evidence, and I will complete all offers of evidence, which I asked on October 31, 1941, as is shown by record page 2013 and following, that I would like to have permission to offer subsequent to that time. That will complete, as I say, all offers so far as my case is concerned in chief. There will be, of course, certain rebuttal testimony that I find it necessary to offer, but I can't offer that until I put in all of my rebuttal, after the Respondents have completed their case.

4799 Trial Examiner Norwood: Mr. MacIntyre, you go ahead and put in your stuff.

(Documents were thereupon marked for identification "Commission's Exhibits 741 to 742," inclusive.)

Mr. MacIntyre: If Your Honor please, may I go on the record and proceed?

Trial Examiner Norwood: Yes. All right.

Mr. MacIntyre: With reference to the statement
4800 which I made at the close of the day October 31, 1941, beginning on page 2013, in which I requested permission to offer certain invoices at a later date, I want to say that I now have those invoices ready to offer. They have been marked as follows: Commission's Exhibit 741, a book of 12 pages, containing invoices of the Clayton Mark & Company, each of which is certified by a representative of that company as being true and correct copies of original invoices of that company;—

Trial Examiner Norwood: Off the record, now.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: —Commission's Exhibit 742, a book of 48 pages, containing invoices of the Enameled Metals Company,—

Trial Examiner Norwood: Forty-eight pages; is it?

Mr. MacIntyre: Yes.

—each of which has been certified by an official of that company as being a true and correct copy of an original invoice of that company;

Commission's Exhibit 743, a book of 32 pages, of invoices of the Garland Manufacturing Company, each page of which has been certified by an official of that company to be a true and correct copy of an original invoice of that company;

Commission's Exhibit 744, a book of 3 pages con-
4801 taining invoices of the General Electric Company, each of which has been agreed to as being a—by counsel of that company as being true and correct copies of original invoices of that company;—

Trial Examiner Norwood: How many is that? Eight?

Mr. MacIntyre: 744, 3 pages—

Trial Examiner Norwood: Three pages. Off the record.

(Discussion off the record.)

Mr. MacIntyre: Commission's Exhibit 745, a book of 21 pages, containing invoices of the National Electric Prod-

ucts Corporation, each of which counsel for that Respondent has agreed is a true and correct copy of an original invoice of that company;

Commission's Exhibit 746, a book containing 141 pages, as invoices of Spang-Chalfant, Inc., each of which counsel for that company, or a representative of the company, or an official of the company, or counsel for consignment jobbers who submitted some of the invoices, have agreed that such invoices are true and correct copies of the original invoices involved.

Trial Examiner Norwood: How many pages is that?

Mr. Gilpatric: 141.

Mr. MacIntyre: Commission's Exhibit 747, a book of 38 pages, containing invoices of Walker Brothers, con-
4802 taining invoices of that company, each of which counsel or an official of that company have agreed are true and correct copies of invoices of that company;

Commission's Exhibit 748, a book of 10 pages, containing invoices of the Youngstown Steel Products Company, which, I believe—

Mr. Gilpatric: Youngstown Steel Products?

Mr. MacIntyre: And Youngstown Sheet & Tube Company.

Trial Examiner Norwood: How many pages, Mr.—

Mr. Gilpatric: Ten.

Mr. MacIntyre: Ten.

—which an official of the Youngstown Sheet & Tube Company has agreed and certified that each of such pages are true and correct copies of original invoices of the Youngstown Sheet & Tube Company and the Youngstown Steel Products Company.

In that connection, I would like to ask Mr. Gilpatric to state what the Youngstown Steel Products Company means. I think the record already shows that it is an operating—

Mr. Cleveland: It does not definitely show that.

Mr. MacIntyre: Well, I thought so. Well, I would like some statement as to what it means.

Mr. Robison: In presenting, on formal request of counsel for the Commission, certain contract forms
4803 into this record, I made the statement that the contract forms produced were published—were printed and bore the name of Youngstown Steel Products Company, which was a subsidiary company and selling agent of Youngstown Sheet & Tube Company.

Mr. MacIntyre: That is a wholly owned subsidiary?

Mr. Robison: Yes.

Mr. MacIntyre: And that statement would apply to these invoices with equal force; is that correct?

Mr. Robison: Well, what was true then is true today.

Mr. MacIntyre: Well, you agree that it equally applies to the invoices about which we have been talking here in Commission's Exhibit 748?

Mr. Robison: I have no doubt of that.

Mr. MacIntyre: I now offer, if Your Honor please, into evidence Commission's Exhibits 741 to 748, inclusive, as described for the record by me.

Mr. Stewart: Mr. Examiner, I would like to have counsel state the purpose for which he is offering the documents.

Trial Examiner Norwood: Yes. What do you want to show by it?

Mr. MacIntyre: These documents are offered for the purpose, among other things, of showing that—

Mr. Stewart: No, I don't want "among other 4804 things".

Trial Examiner Norwood: Well, he will have to state among other things first, and then he can state what the other things are.

Go ahead.

Mr. MacIntyre: Well, the other things are the geographical distribution of these shipments made by these companies and variations in the amounts received by them as mill nets on such shipments.

Mr. Stewart: Is that the limit of it?

Trial Examiner Norwood: As far as that goes, he is limited to his previous understanding about what these exhibits will show, and I think it is rather clear.

Mr. Stewart: I wanted to make sure.

Trial Examiner Norwood: Are these any objections?

Mr. MacIntyre: They are offered for that purpose, and for any purpose for which they can be used in addition thereto in evidence.

Mr. Stewart: That is what the objection is to. Let us find out what the purpose is.

Trial Examiner Norwood: Now, up to this time as to the proffer, they can only be offered for the purposes which you stated previously they would be offered for.

Trial Examiner Norwood: If it should transpire that

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4805 any other consideration would be rebuttal, then we will decide that when the time comes.

Mr. Stewart: Well, you see, sir, the reason I raised the question is this: I don't know what documents he has put in evidence, but if upon examination of them, for example, we look at them from the standpoint of the offer for these two purposes, and we find that the answer is that Mr. MacIntyre is right in that respect, or wrong, pending what your conclusion is—and I don't have to go any further then we are safe, but if there is something else here that we don't know about, then I think we ought to know now.

Trial Examiner Norwood: Well, at any later time either side may offer these things for consideration for other purposes when it appears to be proper.

Mr. Stewart: But for the present it is restricted to those purposes?

Trial Examiner Norwood: Yes, it is restricted to the purposes heretofore announced, and just announced here by the counsel, provided that it does not come within his previous statement.

Mr. MacIntyre: Well, I certainly would not be restricted to any limit below what was provided for when I made the statement on October 31st?

Trial Examiner Norwood: That is correct.

4806 Mr. Austin: I don't see how these show geographical distribution of anything.

Mr. MacIntyre: They certainly show geographical distribution of anything so far as that company was engaged in it.

Mr. Gilpatric: Well, Mr. Examiner, I object to the proffer on the ground that the evidence is incomplete, fragmentary, inconclusive, entitled to no weight, doesn't show any fact that is relevant or material to this case with any degree of competency.

Take, for example, in the case of Youngstown. There are being offered ten invoices out of several hundred that the Commission took from the files of the Respondent which, in turn, represent but a small fraction of thousands of invoices over the period covered. This sort of an offer is putting upon the Respondents the burden of going through all these invoices and measuring the effect, if any to be drawn from this offer against the entire picture, which will take a great deal of time, which will un-

necessarily prolong this case, and I, therefore, think they should be kept out of the record.

Trial Examiner Norwood: Any further objections?

Mr. Houston: Yes, Your Honor, I object to them for the same reason.

4807 Mr. MacIntyre: There is no question raised by anyone as to the identification and the authenticity of any of these documents; is there?

Voices: No. No.

Trial Examiner Norwood: Well, any further objections?

The objections are overruled and the documents are received in evidence.

COMMISSION'S EXHIBITS NOS. 741 to 748 inclusive were offered and received in evidence.

Trial Examiner Norwood: Now, Respondents will have time to examine the remaining invoices and put them all in if they want to.

Anything further?

4808 Mr. MacIntyre: If Your Honor please, that last statement of yours didn't mean that they could come in and offer all of the invoices of all shipments made by all of these companies during the last four-year period? We could not get them in this room.

Trial Examiner Norwood: They can offer any that they can get in this room or outside of the room. It is like—

Mr. MacIntyre: They would have to make a showing at that time that they were relevant and material and would explain these particular ones; wouldn't they?

Mr. Bozeman: Well, you laid the foundation.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. Gilpatric: On behalf of the Respondents, I would like to ask that this hearing be now adjourned for one week for the purpose of enabling the Respondents to present at that time a statement of what they intend to be able to offer to prove on the subject of public bidding and answer to the charges in the complaint and the proof offered by the Commission, and when the Respondents have had a chance to complete the tabulations being prepared from the bids in the office of the Procurement Division of the Treasury, to which access has been allowed them.

I want to further state that until that offer is—

4809 until we are in a position to make that offer, we will

not be able to examine our expert witnesses on the issues in this case, and it would therefore be my expectation that we would ask a further extension of time after next week when we have made this showing of what we intend to offer on the subject of competitive bidding, but except for the subject of competitive bidding and the expert testimony, and whatever proof we have to put in to meet the 305 invoices that are offered today, the Respondents would be complete.

It has been called to my attention that certain of the Respondents have been asked to supply price cards supplementing the offers made this morning, but I am sure those would be ready by next week, if we offer them at all.

Trial Examiner Norwood: Now, off the record.

(Discussion off the record.)

Mr. MacIntyre: In reply to Mr. Gilpatric, I want to say that I oppose any motion to further delay the conclusions of these hearings through further postponements. I want to say that if as the result of any work that was done on bids by representatives of the Respondents last week, it has not been completed, that they should probably be given more time for that, as Mr. Gilpatric has indicated, maybe a week for the purpose of determining whether or not that there is anything among the bids that is relevant and material to the issues here. I do, however, think that if anything else that they have 4810 to offer as evidence is to be offered, it should be offered now without further postponements, for example, other types of evidence.

Trial Examiner Norwood: Now, off the record.

(Discussion off the record.)

Trial Examiner Norwood: I will say with respect to Mr. Gilpatric's motion, that I will adjourn this hearing to 10 o'clock a. m., February 9, 1942, to reconvene in the office of the Federal Trade Commission, Washington, D. C., at which time the Respondents will produce the remainder of their testimony, both economic and factual, without any further adjournment over.

Mr. Gilpatric: I respectfully except to that ruling if by that it is intended if we find by February 9 we are not in a position to complete our story on the public bidding due to insufficient time to examine the records of the public agencies, we are denied the privilege of doing so. I re-

serve the right at that time to make such a motion and appeal from your ruling on my exception to the Commission, but I think it would be wasting the time of all concerned if the matter were raised in advance with the Commission until we know just what we can do by the 9th. If Your Honor disagrees with me on that I will take it up before with the Commission, but we want to attempt to meet your wishes and to move this thing forward so far as we can without prejudicing the Respondents' rights, here. So I would rather wait before taking it up
4811 with the Commission until we see what we can do by the 9th. If there is going to be any question of our not being in a position to do that, we will have to move in the meantime.

Trial Examiner Norwood: If that is counsel's position, then I shall simply allow his motion for a week's adjournment. I was making this other week as a concession in order to close this thing, but if the counsel is going to appeal from my ruling in that matter, I will advise him to do it at once.

Mr. Bozeman: Your Honor, it seems to me that Mr. Gilpatric is entirely justified in saying that he cannot determine what the status of this public bidding proof is going to be until the man who is examining the records makes some further examination, and it seems to me somewhat unfair to penalize the exercise of the right which is given to him by the Commission where one feels that he is not being permitted to present his offer, the expert testimony, after the factual material has been put in. Therefore, I request that the—

Trial Examiner Norwood: There is no reason why the counsel should not go ahead with his economic testimony. He has to make an arbitrary decision about that.

Mr. Bozeman: I submit, Your Honor,—

Trial Examiner Norwood: I am willing to adjourn
4812 until next week if he will be prepared to make a clear statement of what he wishes to prove by these records and then proceed immediately to the production of his expert testimony, but he says he won't do that.

Mr. Bozeman: Your Honor, you are more or less forcing Mr. Gilpatric to get ahead of himself, it seems to me.

Trial Examiner Norwood: Well, I have given you a week to look up those records and there is nothing to show

for it here today, and I am offering to give you two more weeks but that doesn't seem to satisfy you, either.

Mr. Bozeman: The only thing we want is to have a fair opportunity to look into those records, and I defy anyone to say we have been negligent or careless about these records. In fact, we have begged the Commission to give us access to those records and they refused us. I am not accusing anyone, but the point is we did not have the privilege of examining these records, and then at the last minute we have been shoved around because we haven't been able to see the records.

Trial Examiner Norwood: You come in here next Monday and show those records.

Mr. Gilpatric: May I make this suggestion? May we adjourn for one week for the purpose of making whatever showing we wish to make with respect to the relevancy and the importance of the bids. If you are not satisfied with that showing as justifying further time, and if
4813 we feel aggrieved by your ruling, we then appeal and we do so before February 9, which date be fixed for the expert evidence, and that alone—in other words, we first dispose by next week's hearing of the question on the competitive bidding, and we be left with whatever rights we have, if we have any, to appeal from you at that time so that we are not left with only a week to cover both parts of the case.

4815 Mr. Stewart: Mr. Examiner, I have been sitting on the side lines listening to this wholly unnecessary talk. As I understand Mr. Gilpatric, I think he was apprehensive. His position on your ruling on adjournment was that it would leave us in a position that if we were not able to produce this date on February 9th or thereafter, that we might then be foreclosed, but my idea would be that, first, you were convinced, and I am sure Mr. MacIntyre has been throughout, that all of us have been acting in the utmost good faith, and I think that extends to our efforts to meet this situation. Whatever the difference of opinion is, I think you can assume that we have been doing every-
4816 thing humanly possible now. If on February 9 we can convince you that we have done everything that you could reasonably ask us to do to get this information, and we are still unable to complete it, I would be disposed to rely on your discretion to give us additional time that we had to have. In the meantime we go ahead with the economic testimony.

Trial Examiner Norwood: I think that is the right thing to do. I simply offered this for acceptance in principle.

Mr. Stewart: That is the way I interpret it. I think it probably was misunderstood.

Trial Examiner Norwood: But if there are going to be certain reservations that render it probable that that program will not be followed, then I will simply allow Mr. Gilpatric's motion here about a week's adjournment under the conditions which he last stated.

Mr. Gilpatric: That is the way I would prefer to have it, with all due respect to Mr. Stewart.

Trial Examiner Norwood: Yes.

Mr. Gilpatric: I would rather have a week's adjournment with the understanding that if we are not able to convince you or the Commission that we should not have more time for the bidding study at that time, we then start out on the 9th with our expert evidence.

4817 Trial Examiner Norwood: Yes. That is all right.

Mr. Houston: Your Honor, I would like to call attention to one thing that in connection with these invoices which Mr. MacIntyre has introduced, I understand the Commission's order to be that in permitting Mr. MacIntyre to put these in the Respondents would be permitted a reasonable time in which to adduce evidence to meet anything in these which they would care to meet. Now, Mr. MacIntyre has made a certain selection in his case, and I think it may involve a fairly careful examination of these and also the other invoices to see just what the showing is and how, if possible, to meet the evidence. I am not in a position now to state what that will be, but I just wanted to make that remark for the record.

Trial Examiner Norwood: That is a rather mild difficulty compared to these others.

Mr. Houston: Yes, I think so.

Trial Examiner Norwood: And it can be worked out contemporaneously with these others.

The hearing is now adjourned, as stated, until Tuesday, February 3, 1942, 10 o'clock a. m., Eastern Standard Time, Office of the Federal Trade Commission, Washington, D. C., in the room posted on the bulletin board, at 3:50 p. m.

(Whereupon, at 3:50 o'clock p. m., January 27, 1942, the hearing in the above-entitled matter was adjourned.)

4819 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on January 27, the hearing in Docket 4452 is now reconvened in Room 532, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., Eastern Standard Time, February 3, 1942.

Please note the appearances.

You may proceed, Mr. Gilpatric.

4852 Trial Examiner Norwood: Now, are you ready with your other witnesses?

Mr. Gilpatric: Mr. Examiner, that concludes all the Respondents had to offer on the subject of competitive bidding today.

I have some documentary evidence which I would like to have marked.

Trial Examiner Norwood: Five minutes' recess.

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 331-A and 331-B, and 332-A and 332-B.")

(There was a short recess taken.)

4853 Mr. Gilpatric: Mr. Examiner, I offer in evidence as Respondents' Exhibits 331-A and B the conduit price card of Respondent Fretz-Moon Tube Company, No. 59.

Mr. MacIntyre: My only objection to this is that it is irrelevant and immaterial to the issues in this case.

Trial Examiner Norwood: Respondents' Exhibit 331-A and B received as marked. Objection overruled.

RESPONDENTS' EXHIBIT NO. 331-A and 331-B, was offered and received in evidence.

Mr. Gilpatric: On behalf of Mr. Milton Tucker, the attorney for Laclede Steel Company, I offer in evidence as Respondents' Exhibit 332-A and B a tabulation of the sales of rigid conduit by that company during the period of January 1, 1937, to January 24, 1941, showing the volume of tonnage sales at the current card and sales at other prices.

This tabulation has been submitted to Mr. MacIntyre, and I understand that in order to avoid compelling bringing a witness all the way here from St. Louis to Washington for the sole purpose of testifying about this tabulation, Mr.

MacIntyre is willing to waive his right of cross-examination in that connection.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. MacIntyre: I have informed Mr. Tucker that
4854 I would waive cross-examination on this. I told him, however, that despite all that I had heard about the tabulation, it was confusing to me. I don't really understand it very clearly, but I don't believe from what he told me that the witness that he would bring on would be able to help the confusion that exists about it, so, consequently, it would stand even after the witness testified in the same state, and we would have no more than the tabulation purports to give us on its face. I, therefore, told him I would waive cross-examination of the witness and that the things may be considered here as if he had had a witness here who had identified it and thereby made it to that degree competent. I, of course, would also object to it on the grounds that it is irrelevant and immaterial—

Trial Examiner Norwood: Now, this is—

Mr. MacIntyre: —just as I would if the witness were here.

Trial Examiner Norwood: This is similar to those numerous ones that we have received on this matter.

Mr. Gilpatric: It was prepared on exactly the same basis as the Youngstown Sheet & Tube Company's tabulation.

Trial Examiner Norwood: Now, off the record.

(Discussion off the record.)

Trial Examiner Norwood: Back to the record.

The objection is overruled and the exhibit is received as marked, as Respondents' Exhibit 332-A and B.

4855 RESPONDENTS' EXHIBIT NO. 332-A and 332-B, was offered and received in evidence.

(A document was thereupon marked for identification "Respondents' Exhibit No. 333.")

Mr. MacIntyre: If Your Honor please, last week Mr. Glen McDaniel of Sullivan & Cromwell, attorneys for Respondent Spang Chalfant, Inc., wrote me and asked me if I would agree to a stipulation concerning the testimony of Mr. A. E. Walker, president of that company, whom he proposed to call as a witness to testify about a particular matter. He said he did not want to call Mr. Walker here because Mr. Walker is busy, and if I would stipulate what

Mr. Walker's testimony would be concerning that matter he would appreciate it. Well, I decided to so stipulate and sent the note which incorporated that stipulation back to him on Friday of last week. Monday—that is yesterday—I received a reply from another member of his firm advising me that Mr. McDaniel went into the Navy since he wrote me, but that the stipulation is accepted, agreed to, by them, and they wanted me to offer it for them, that is, on the behalf of those Respondents; and the counsel for the Respondents who at present have seen it and read it in the last few minutes. So, for and on the behalf of Spang Chalfant, at the request of Mr. McDaniel and Mr. Edward H. Green, of Sullivan & Cromwell, I give to the Re-
4856 porter this stipulation with the request that it be for them copied into the record.

Trial Examiner Norwood: Yes. It may be entered on the record.

The stipulation is as follows:

Stipulation With Respect To Offer Of Proof By Respondent Spang Chalfant, Inc.

It is hereby stipulated by and between counsel for the Federal Trade Commission and counsel for respondent, Spang Chalfant, Inc.,

1. That if A. E. Walker, president of Spang Chalfant, Inc. were called by counsel for respondent Spang Chalfant, as a witness in its behalf and duly sworn, he would testify in substantial conformity with the statements set forth in paragraphs 1 to 5, both inclusive, of the Offer Of Proof herein of respondent, Spang Chalfant, Inc., a copy of which has been duly received by counsel for the Federal Trade Commission.

2. That it may be deemed that the said A. E. Walker has been so called to the witness stand, duly sworn, and that he has so testified; and that the said Offer of Proof may be marked as an exhibit in this case; and that the said paragraphs 1 to 5, both inclusive, of the Offer Of Proof herein may stand if received into the record here as
4857 evidence of the testimony of the said A. E. Walker introduced in support of the defense of the respondent Spang Chalfant, Inc., herein, subject, however, to the right of counsel for the Federal Trade Commission to urge

any and all objections to the competency, materiality, or relevancy of such testimony, or any part thereof.

3. That the statements contained in the said Offer Of Proof will, if received in evidence, be given the same weight as if oral testimony had been offered and received to the same effect.

4. That counsel for the Commission shall have the right to move to strike any portion of the said Offer Of Proof and that the said motion shall have the same force and effect as though the witness had been interrogated on the matters contained in the said Offer Of Proof and counsel for the Commission had stated objections to the questions propounded to such witness. Said motion to strike shall be deemed to have been made as objection for all purposes of this record prior to any statement made by such witness.

5. That any portion of the said Offer Of Proof if stricken pursuant to such motion, shall constitute and for all purposes be deemed to be a rejected offer of proof in order to permit a review as to the correctness of the ruling on the motion, but under the circumstances of such ruling it shall not be deemed to constitute testimony of the witness.

4858 6. That cross-examination of the said A. E. Walker is waived by counsel for the Commission on the matters contained in the said Offer Of Proof.

7. That it is an unseparable condition of this stipulation that nothing contained herein shall be deemed to constitute any admission whatever on the part of either the Federal Trade Commission or its counsel that any of the statements contained in said paragraphs 1 to 5, both inclusive, of the Offer Of Proof herein are true.

The sole purpose and intent of this stipulation is to shorten the hearing of the above entitled proceeding and to enable respondent Spang Chalfant, Inc. to put in this part of their defense without the necessity of calling A. E. Walker as a witness from Pittsburgh, Pennsylvania to Washington, D. C.

Offer Of Proof Of Respondent Spang Chalfant, Inc.

To the Federal Trade Commission:

Respondent, Spang Chalfant, Inc., hereby offers to prove by A. E. Walker the following facts, to-wit:

1. A. E. Walker, on or before July 9, 1940, received from Alfred Byers, Secretary of the National Electrical Wholesalers Association, a copy of the report of the Conduit Committee of that association as adopted at its meeting held in Hot Springs, Virginia, May 20, 1940, a copy of which is in evidence in this proceeding as Commission's Exhibit 42.

4859 2. On July 9, 1940, A. E. Walker over his name as president of respondent, Spang Chalfant, Inc., wrote a letter on July 9, 1940 to L. E. Latham, president of E. B. Latham & Company, 240 Fourth Avenue, New York, New York, in which acknowledgment was made of the receipt of the Conduit Committee report referred to in the immediately preceding paragraph herein.

3. A. E. Walker in the said letter to L. E. Latham, under date of July 9, 1940, addressed an objection to a statement contained in the said Conduit Committee report of its meeting of May 20, 1940, the statement thus objected to being as follows:

"Your Committee has been assured that the practice of increases and decreases in prices will, in so far as it is within the power of the individual manufacturer, be limited to steps of not to exceed 5% as the occasion justifies."

4. A. E. Walker, in the said letter of July 9, 1940 to L. E. Latham, also stated that it was his recollection that the Conduit Committee merely suggested such a limitation on price changes. That this company did not give any assurance, nor did it agree, either expressly or by implication, that it would adopt or adhere to any limitation on changes in the price of conduit and that it wished to deny any inferences to the contrary that may be
4860 drawn from the portion of the report to which objection was stated in the said letter of July 9, 1940, as referred to above.

5. L. E. Latham, under date of July 12, 1940, replied to the letter of A. E. Walker, dated July 9, 1940, and that

such letter is the one now marked for identification as respondent's exhibit 333.

(signed) Sullivan and Cromwell,
By (signed) Edward H. Green,
Counsel for Respondent, Spang Chalfant, Inc.

(signed) Everette MacIntyre,
Counsel for the Federal Trade Commission.

4861 Mr. Gilpatric: Mr. Tucker of Laclede Steel Company asked me to ask Mr. MacIntyre on the record whether he intended to offer as part of the Commission's case any of the invoices taken from the files of Laclede Steel Company.

Mr. MacIntyre: If any of those are offered they will be offered as rebuttal material.

Off the record for a second.

(Discussion off the record.)

Trial Examiner Norwood: Is there anything further?

4862 Mr. Gilpatric: Mr. Examiner, subject to any proof which we may want to put in in response to the invoices that were offered in evidence by the Commission last week and which, I understand, we are to be given the opportunity to examine, the Respondents have no further proof to offer other than the competitive bidding material and the economic evidence which we intend to offer and which we will be better prepared to begin on Tuesday, February 10th, and I would ask Your Honor to, therefore, adjourn the hearing to that date with the understanding you will begin then and continue until we conclude that entire line of offer.

Trial Examiner Norwood: Well, now, our previous understanding was Monday, February 9th, and we have, you know—at this time it is very difficult to get hearing rooms and we have this hearing room for Monday, February 9th.

Mr. Gilpatric: The reason I am asking that one further day is that—purely on personal considerations on the part of the witnesses and the counsel who will examine those witnesses, and I am making it purely—asking you as a matter of grace to give us that extra day. I realize

that it is not in accordance with the understanding and we planned to go ahead on the 9th, but—

Trial Examiner Norwood: And counsel then will complete his case without any further delay?

Mr. Gilpatric: That is correct, Your Honor.

4863 Mr. MacIntyre: I can't see why that they could not go ahead with it this week, let us have it all over with before next week if there is only two or three days left. Of course, I don't know all their problems.

Trial Examiner Norwood: Well, as a matter of fact, we will not lose any time on it. We are up to date on the record. That is, the final reports will be on this thing just as quickly as if we had not taken a week now and then because we are putting that time in on the record.

Mr. Gilpatric: Well, we are, too, Your Honor. We have a great deal of work just on these invoices alone. There are three hundred and some odd invoices that we have to go over.

Trial Examiner Norwood: Well, now, at 11:30 o'clock a. m., Tuesday, February 3, 1942, we will recess to reconvene on Tuesday, February 10, 1942, at 10 o'clock a. m., Eastern War Time, in Room 532 of the Offices of the Federal Trade Commission, Washington, D. C., or such other room as may be posted on the bulletin board. We may have to go to Room 388.

(Whereupon, at 11:30 o' clock a. m., February 3, 1942, the hearing in the above-entitled matter was adjourned.)

4865 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on February 3d, hearing in Docket 4452 is now reconvened on February 10, 1942, in Room 543, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., Eastern War Time.

Respondents will proceed to present evidence.

Mr. Robison: Mr. Examiner, before we call our next witness, I offer in evidence as supplementing and continuing the evidence that was offered as Respondents' Exhibits 187 and 189, which were Price Schedule 6 of the Office of Price Administration, a revised Schedule 6, which has been issued under date of February 4, 1942.

Trial Examiner Norwood: Is there any objection?

Mr. MacIntyre: I have not had a chance to get it—

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

(Documents were thereupon marked for identification "Respondents' Exhibit No. 334-A to 334-D.")

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBIT NO. 334-A to 334-D was offered and received in evidence.

Mr. MacIntyre: May I state an objection to that?

Trial Examiner Norwood: Strike the "Received." I thought you said you did not object.

Mr. MacIntyre: No. I do object to this offer as
4866 being material, which is incompetent, irrelevant, and immaterial as to any of the issues in this case. It is a publication by the Office of Price Administration, apparently, and is dated for release Thursday, February 5, 1942. I don't know for what purpose it is offered. There has been no foundation laid for it, and, certainly, under the circumstances of its offer here it is incompetent, irrelevant, and immaterial.

Trial Examiner Norwood: What—

Mr. Robison: As I have said, the purpose of offering this is to bring down to date the evidence which was admitted earlier in the form of Price Schedule 6 of the O. P. A. This is a modification—a revision, modification, of that price schedule, and it is offered for the purpose of showing the present-day status of the matter of the fixing of ceiling prices for rigid steel conduit.

Trial Examiner Norwood: Why did we ever receive the first one?

Mr. Robison: Because the question whether ceiling prices have been fixed by the Government for this product has been in controversy here in several different connections, and for that purpose we put in the original Price Schedule No. 6 together with some accompanying evidence which, by reason of reference in the price schedule
as issued, was necessary in order to make the proof
4867 complete. Now, this is a present-day revision of that price schedule.

Mr. MacIntyre: Well, if Your Honor please, the way I see the situation is—

Trial Examiner Norwood: Wait a minute.

Are you through?

Mr. Robison: I am through.

Mr. MacIntyre: The way I see the situation is this: When Mr. Dell, one of the purchasing officers for the Panama Canal Commission, was on the stand testifying, he testified—that was back in September—that during the summer of 1941 that office had received bids from rigid steel conduit manufacturers which showed that between the date they had received the last ones, previous ones, and then these last ones, about which he was then testifying, the price of rigid steel conduit had advanced almost a hundred percent. Well, there was a considerable objection on the part of the Respondents to that testimony going in. They contended that it could not have done so because there had been some fixing of a ceiling price prior to that by O. P. A. Well, due to the unsatisfactory state of things, after all the objections were made, and in light and with deference to a portion of the objection to the effect that it was irrelevant and immaterial, that is, that the nature in which Mr. Dell was giving his testimony was incompetent, I withdrew the offer on it, if Your Honor please, and you will find that at the beginning
4868 of the day following the testimony on which he made those statements. Once that I got that out of the record and removed it from any question, Respondents came back about three or four or five weeks ago and offered all of the price schedules which they had filed with O. P. A., which, of course, did not meet Mr. Dell's testimony. It had been stricken.

Now, after they have set that straw man up they come up now this morning to fatten him just a little with further straw. That is all there is to it.

Trial Examiner Norwood: I confess to you I don't see why yet the first one was received, and I am going to reserve the ruling on that until I can examine the paper and refer to the record and possibly discuss it with both sides off the record.

Mr. Robison: Well, you will recall it has been repeatedly contended here in one connection or another that these Respondents, through an alleged conspiracy and agreement, have been gouging the Government in excessive prices for conduit, and the evidence was accepted in large part for the purpose of showing that the Government had fixed a ceiling price; it could not be gouged.

Trial Examiner Norwood: Well, I will reserve the

ruling on that until we see. If it serves any useful purpose I see no reason why it should not be received.

Mr. Moore: May I say this, Mr. Examiner:—

4869 Trial Examiner Norwood: Counsel please rise.

Mr. Moore: I am sorry.

I was not here when the previous document was put in evidence, but our purpose of offering this is simply to bring the situation down to date. On account of some objections that were made, some questions that were raised in connection with the previous schedule, this schedule has been revised in order to iron out what we thought to be some rough places, and I submit that either the other schedule must go out or this one should be accepted.

Trial Examiner Norwood: Call your witness.

Mr. Moore: I am told, Mr. Examiner, that a question was raised in connection with the previous schedule as to whether conduit was included. Now, in this, conduit is expressly included.

Trial Examiner Norwood: Yes. Well, I want to examine that.

Mr. Stewart: Don't you recall, Mr. MacIntyre adduced it. He had some conversation with somebody—

Trial Examiner Norwood: Anything further will be off the record on this particular thing. We will take it up when we get time, but call your witness.

Mr. MacIntyre: Of course, I did not say last fall that conduit would not be included at some time in the future.

4870 Trial Examiner Norwood: That is off the record. Call your witness.

Mr. Moore: Mr. Fairchild.

Trial Examiner Norwood: Mr. Fairchild, you have been sworn; have you?

Mr. Fairchild: I have been sworn.

Mr. Moore: Fred Rogers Fairchild.

Mr. MacIntyre: If Your Honor please, the witness has not been sworn in this proceeding.

Mr. Fairchild: I have not been sworn in this case, no.

FRED ROGERS FAIRCHILD was thereupon called as a witness for the respondents, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Moore.

Q. Mr. Fairchild, I hand you a statement, which is entitled "Statement of Qualifications of Fred R. Fairchild as an Economic Expert." Will you tell me how that has been prepared, in so far as you know?

A. This is based on information which I furnished to you as counsel.

Q. That is, you gave us a statement of facts and then we have put it in narrative form?

4871 A. That is right, sir.

Q. Have you read the statement?

A. I have.

Q. Do you testify as to the truth of the statements therein contained?

A. I do. This is a true statement.

Mr. Moore: Now, Mr. Examiner, instead of reading it I would like to have it incorporated in the record the same as if the witness gave the—his testimony in exactly its form.

Trial Examiner Norwood: Any objection to this, Mr. MacIntyre?

Mr. MacIntyre: No, I do not object to that being incorporated in the record.

Trial Examiner Norwood: It may be so incorporated as follows:

At the present time I am teaching at Yale University in both the college and the graduate school.

I received my college training at Doane College in Crete, Nebr., graduating there in 1898 with the degree of B. A. and then studied for three years at the Yale Graduate School, receiving a Ph. D. in economics from Yale in 1904.

I have been teaching in the field of economics continuously since that time. I have taught general economics,

general theory and history of economics, money and 4872 banking, and taxation and Government finance.

My present title is Knox Professor of Economics.

In my study in the general field of economics I have given special attention to the economic principles relating

to the subjects of markets and marketing, competition, value, and price.

I have published various articles and books on economic subjects and am the author of a book entitled "Economics," which is widely used as a textbook in American high schools. I am author with two colleagues (Furness and Buck) of two college economics textbooks entitled, respectively, "Elementary Economics" and "Economics," which are, I believe, the most widely used of all textbooks on economics in American colleges. These textbooks in general economics contain extended treatment covering several chapters on the subjects of markets, marketing, competition, value, and price. In addition, I have written a large number of articles in the economic field, including articles which deal with problems of markets, competition, price, and value.

I am also the author (with associates) of "Forest Taxation" (Report of the United States Forest Taxation Inquiry). This book contains a very extensive and elaborate discussion of the economic principles of price and value under various conditions of competition.

4873 I am a member of the American Economic Association, and at one time was vice-president. I am a member of the National Tax Association and was formerly vice-president and president of that Association. At one time I was a member of the American Association for the Advancement of Science, and was vice-president in charge of the section of that society which deals with the social sciences.

I have served as a consulting expert in taxation and Government finance for the United States Government, the Territory of Hawaii, the State of New York, the Republic of Colombia, and the Republic of Santo Domingo. I have also testified as an expert witness on general economic principles in various cases.

By Mr. Moore:

Q. Professor, in your studies, in your teaching, have you given special attention to the pricing of merchandise?

A. I have.

Q. Have you, in your studies in economics, given special attention to the study of the basing-point method of quoting and determining prices of merchandise?

A. Yes, I have given attention to that subject.

Mr. Moore: Mr. Examiner, I offer Mr. Fairchild as an expert to testify in this case.

Trial Examiner Norwood: He is so received.

Mr. MacIntyre: I have no objection to Mr. Fair-
4874 child being accepted as an expert in the field of economic theory, but I do say that the record here does not show anything beyond that.

Trial Examiner Norwood: Well, I don't suppose—

Mr. Moore: May I have that statement read? Show beyond what?

Trial Examiner Norwood: Read it.

(Record read.)

Mr. MacIntyre: Show that he should be received as an expert as anything beyond that. That is what I meant to say.

Trial Examiner Norwood: Beyond the field of economics?

Mr. MacIntyre: Economic theory.

Trial Examiner Norwood: He is not offered as an expert in anything else that I know of.

Proceed.

By Mr. Moore:

Q. Professor, what is a market in the economic sense?

A. A market, as defined in economics, is the meeting place of the forces that lead to exchange of products and the determination of their prices.

Q. Is a market, in the economic sense, necessarily the place where negotiations between buyer and seller take place?

Mr. MacIntyre: I object. I don't think it is neces-
4875 sary at this juncture for the counsel to lead the witness in that way.

Trial Examiner Norwood: I don't think that—

Mr. MacIntyre: May we have the question read?

Trial Examiner Norwood: —that it would be harmful to lead this witness.

Mr. Moore: I can rephrase this question and use the words "whether or not" if the Examiner would like to have me do it.

Trial Examiner Norwood: That is all right. Objection overruled.

A. It is not necessary that the buyers and sellers be

actually present at the market place, since they may be represented by agents or may be in communication through telephone, telegraph, or mail, or otherwise.

By Mr. Moore:

Q. What is your understanding of the term "price"?

A. The price of any good is the amount of money that would be given in exchange for one unit of that good. It might be added that that presumes a free exchange in which neither buyers nor sellers are forced.

Q. You mean by that where the buyer or the seller is in such circumstances he must buy or sell?

A. Well, I mean, rather, that he is under some compulsion that prevents his acting entirely as a free agent.

4876 Q. In the economic sense, does "price" have any meaning unless there is a definite understanding as to where the seller is to deliver the merchandise?

A. No. Price relates to the—always to a particular place.

Q. Which you call what?

A. The market or the place where the product is delivered to the buyer.

Q. Well, is it necessarily the place where the product is delivered?

A. There might—ordinarily would be so, but there might be exceptional cases in which that would not be true, but, at any rate, it is the place where the forces that lead to the transfer of ownership come together.

Q. Which may or may not be the place where the delivery is made?

A. Yes. And delivery might not always be at that place.

Q. Does "price" have any meaning without specification of time?

A. No, sir. When you refer to a price you must always specify a particular time, because, other things being equal, the price may change from time to time.

Q. From the standpoint of economic theory, what is the relation of cost of production to price?

Mr. MacIntyre: I object. It calls for irrelevant and immaterial matter.

4877 Trial Examiner Norwood: Objection overruled. Answer the question.

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A. In answer to that question one needs to consider two conditions: First, the immediate price problem. In that connection the cost of production has little or no influence. If the seller is in such position that his own offerings in the market are a small part of the total amount offered, so that his offering would not have an effect upon the price, then the seller comes to the market and finds a price prevailing. He can either sell at that price or decline to sell. Regardless of his cost of production, he makes the choice as to whether he wishes or does not wish to sell at that price.

If, on the other hand, the seller's offering is so large a part of the total amount of the product offered in that market that his offer may have an effect upon the price, then he decides what to offer and what price to charge in connection—in relation to the conditions of the demand prevailing in that market at that time, and shapes his policies so as to realize the best price, and by "best price" I mean the price that will give him the maximum profit or the minimum of loss. He may not always set the highest possible price he could obtain because he might have regard for his future relations with the customers, and in that connection might have—might be reluctant to charge
a price quite out of line with future costs of produc-
4878 tion. The seller would seldom have any reason for
not charging you a low price if that were to his interest. He might put his goods up for sale at auction, for instance.

Mr. MacIntyre: I—

The Witness: No, I had not quite finished, Mr. MacIntyre.

Mr. MacIntyre: Pardon me.

A. (Continuing.) The other condition is the long term price problem. Here cost of production is of importance. In the long run producers are not going to be willing to manufacture and sell goods unless they can recover their costs, and so in the long run the seller will plan to charge a price not less than his cost of production. On the other hand, in a competitive market, competition will prevent any one seller charging a price very much above cost of production, so that cost of production also furnishes a force in keeping the prices from rising too high. A seller may have a reservation price which he sets and below which he will not sell, and that may be related to cost of

production, although directly it is based on what he expects the future price to be and what the carrying charges to that future time will likely be.

Mr. MacIntyre: I move to strike those portions of the witness' answer which attempt to state what particular people in particular instances might do. That does not state economic theory but attempts to analyze the
4879 psychology of operators in particular situations.

Mr. Moore: Why, I don't see that objection, Mr. Examiner. It seems to me that he is testifying as to the effect of the laws of economics as they operate.

Trial Examiner Norwood: I don't think that I can draw as fine a line as the counsel desires.

I will overrule the objection.

By Mr. Moore:

Q. Now, Professor, you spoke of the cost of production. From the standpoint—from an economic standpoint, what does cost of production include?

A. Well, in general, cost of production includes all the costs for materials, services, transportation, and so forth, which are necessary to bring the good to the place of delivery to the buyer. Specifically, it includes the cost of materials, wages, taxes, depreciation, transportation, and if it does not—if it is not defined to include profit it must—there must be the possibility of the owner or operator of the business having the chance of getting a profit sufficient to induce him to go into the business.

I should have said also that cost includes what we economists call wages of management of the owner of the business.

Q. I take it it would include insurance, of course. How about interest on capital?

4880 A. It would include insurance; it would include interest on capital, whether the capital belonged to the owner or not, and rent of land and equipment, and also whether it belonged to the owner or not.

Q. What, in your opinion, governs demand?

A. Demand is finally governed by the choices of consumers which, in turn, depend upon marginal utilities of goods, the comparative utilities of different goods, the aim of the consumers to satisfy their wants and obtain the maximum utility. Intermediate demand comes from dealers, manufacturers, business men who are not directly

satisfying their own wants but providing goods to satisfy the consumers, and their demand comes from their desire to purchase goods or services and later sell those goods or sell a product made from those goods, and they will seek to pay such prices or demand such quantities as will contribute to their making the maximum profit or the minimum loss from their enterprise.

Q. Do desires for merchandise arise spontaneously in the minds of potential buyers?

A. I would say comparatively seldom. I suppose there might be—there are cases where a buyer would, from his own inner consciousness, think of some desire, but wants—desires are—generally arise from observing what other people have, from seeing things in the shop windows, from reading advertisements, from hearing the talks of
4881 salesmen, and in other ways from outside suggestion.

Q. As an economist, what do you understand by the term "competition"?

A. Competition is the attempt by a seller to sell to—or the attempt by two or more sellers to sell to buyers, each seller acting in his own interest and without regard to the interest of other sellers. That is, of course, a definition of competition of sellers, and there is a correspondent definition of competition of buyers. The latter, however, is not very often used in economic discussion.

Q. I understand from that, then, when you speak of competition, you consider competition between sellers and not competition between buyers?

A. Yes, sir; unless something were said specifically to indicate the other.

Trial Examiner Norwood: Well, to be real competition, the interest of the person trying for a sale must be contrary to the interest of another potential seller, must it not?

The Witness: Well, it must be at least carried on without any attempt to aid the other seller. I wouldn't—

Trial Examiner Norwood: Well, to have a real competition, its interest must be contrary to the interest of its rival?

The Witness: It would normally be so, that is,
4882 since each seller is trying to sell all he can and other sellers are trying to do the same, the success of one seller must be contrary to the interest of the other seller.

By Mr. Moore:

Q. Well, you said, if I remember your answer, that each was active independently. Did you mean by that each acting in his own interest?

A. Each acting in his own interest and without regard to the interest of the others.

Now, the injury to the others I didn't include as a necessary part of the definition because I think that follows, incidentally.

Mr. Moore: Does that answer your question, Mr. Examiner?

Trial Examiner Norwood: That is all right.

By Mr. Moore:

Q. What is price competition?

A. Price competition, when the term is properly defined and used as I would say, relates to a situation in which sellers are offering as an inducement to buy their particular goods other considerations than price, such as—I mean offering price considerations.

Q. That is, they are not offering other considerations besides that?

A. Yes. I slipped over into the opposite. Could I 4883 repeat that please?

Q. Do you want to strike that out?

A. I think I had better ask to.

Mr. Moore: Delete it, will you, please?

Trial Examiner Norwood: Yes; delete it.

Mr. MacIntyre: If Your Honor please, I don't mind the witness correcting any statement that he has made and giving us what he considers to be the correct statement, but I do object to any statement being deleted which he has made, whether he considers it correct or incorrect. I think that the Respondents are bound by everything which the witness says which is taken by the Reporter, and I insist that it stay on the record.

Mr. Moore: There is not any question but what Professor Fairchild will be bound by any statement—we will be bound by any statement he makes, but for the simplicity of the record it seems to me the orderly thing is to delete it, but I have no objection if the Examiner doesn't agree.

Trial Examiner Norwood: If the counsel objects, I shall substitute the word "strike" for "delete."

Mr. Moore: That is all right.

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Trial Examiner Norwood: That is, it has no official standing on the record, but it is there for the counsel to see if he thinks there is anything of value to him in it.

Mr. Moore: That is all right.

4884 Trial Examiner Norwood: Go ahead.

By Mr. Moore:

Q. The question, Professor, is what is price competition?

A. Price competition, as that term should be strictly defined and used, relates to a state in which sellers are offering as an inducement to buyers price concessions or offering prices lower than are offered by their competitors. The antithesis would be what you might call quality competition, in which the inducements offered were not lower prices than competitors, but superior quality or larger unit of quantity or services or other such inducements.

I might say that what I have called price competition and quality competition are obviously not mutually exclusive conditions. In other words, even under conditions of price competition, as I have described it, quality and quantity and service are important considerations. And under the other conditions which I have called quality competition, the price is an important consideration. When buyers are considering the purchase of any good they will have in mind two things: One, the quantity and the quality of the goods, and the services that go with it; and the other the amount of moneys that has to be paid for it; and sellers likewise in offering goods have in mind both the quality and the quantity of the goods and services that they offer and the price that they expect to receive—the amount

4885 of money they expect to receive for it. There is no competition in which price is not present, an important part, and even though the price is not changed, changes in the quantity or the quality or the services are of the same effect as a change in price. If, for instance, the unit of quantity should be doubled, and the price remained the same, that is the same thing as cutting the price in half. If the quality should be increased or improved, that is the same as offering a lower price; so that it is not correct to think of price competition as a peculiar kind of competition or quality competition as the kind of competition that does not involve price except in the very narrow way in which I have defined those terms.

Q. If sellers seek to rival each other in stressing particular qualities of their respective products, in assuring

prospective customers of the uniformity and dependability in the quality of their products, in emphasizing punctuality and delivery and other services, even though the sellers are quoting the same prices, is that, in your opinion, real competition?

A. Yes, it is.

Q. Would you say that it differed at all from price competition?

A. Only in the very narrow sense which I have already stated does it differ from price competition, and for all important purposes it is the same—it is the same kind
4886 of competition as price competition.

Q. When a seller is seeking the patronage of prospective buyers, is it or is it not a natural competitive procedure for the seller to stress quality of his product and the services that he renders his customers?

Mr. MacIntyre: I object. I don't think it is necessary for counsel to propound such leading questions to his own expert witness.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

A. Yes, sir; it is.

By Mr. Moore:

Q. That is, you mean by that it is a natural competitive procedure?

A. Yes; that is my understanding of the question.

Q. If the qualities of the products of different sellers and the services that they render are different and such sellers in their own self-interest seek to rival each other in stressing particular qualities of their products and the services that they render, even though they quote the same price, will you tell me whether or not that procedure is to the advantage or disadvantage of buyers?

Mr. MacIntyre: I object. It is not a part of economic theory for this witness to state—and it is not a
4887 statement or a part of economic theory for this witness to state whether or not the giving of something to one buyer and the taking of it from another buyer is to the advantage or disadvantage to those two buyers. It isn't within his field at all as an expert here this morning.

Trial Examiner Norwood: I think he may give us that angle of competition.

Objection overruled.

The Witness: Could I hear that question read, please?
Mr. Moore: Read it, Mr. Reporter.
(Question read.)
A. Why, it certainly is to the advantage of buyers to have the most complete information about goods that are offered to them for sale, and whether the goods are identical or not, whether the prices are the same or not, the offering to buyers of information by the sellers about their—about the respective qualities of their products is to the advantage of the buyers. I assume that false statements are not being made.

By Mr. Moore:
Q. That is, false statements by the sellers?
A. By the sellers.
Q. Does emphasis on the quality of the product and on the services rendered by sellers carry any implication
4888 as to whether or not the price is too high?
A. No, sir; it does not.
Q. When sellers rival each other in stressing appeals other than price, does that indicate to you as an economist that the buyers are being misled or imposed upon?
A. It does not. Of course, if the sellers are making false statements the buyers would be misled or imposed upon, but the question of a false statement is a question of fact in each case, and the fact that sellers are making statements about the qualities of their goods presents no inference of attempt to mislead or defraud buyers.
Q. When you say that, I understand you mean to refer to quality, to advantages other than price?
A. Yes. I so understood the question.
Q. Is rivalry among sellers in stressing appeals other than price a natural competitive procedure?
A. I think it is. Any seller might—would naturally think of making such appeals, and if he did not think of it he might see his competitors making such appeals and follow their example, acting independently in his own interest.
Q. May a manufacturing company seek to sell similar merchandise simultaneously in more than one market?
A. Did you say "may"?
Q. Yes.
A. Yes, sir; it may.
4889 Q. Can you illustrate any conditions under which a manufacturing company might seek to sell similar merchandise simultaneously in more than one market?

A. Well, a manufacturer might have a plant whose capacity was greater than sufficient to meet the demand in his particular locality. In that case he would seek to sell in other markets than that in his own locality. He would do that even before he had sold all he possibly could in his own market, because after a time it would appear that he could increase his sales in his own local market only by a lowering of the prices, and before going too far in lowering the price he could find it advantageous to seek sales in other markets and so might find himself selling in a very large number of different markets. A seller would also find it to his advantage to be selling in other markets than his own local market in order that he might be in position to take advantage or adjust himself to changes in demand. The demand for a product may change from time to time and may change differently in the different markets; and a seller will desire to be able to offset the decreased demand in one market by an increased demand in another market, or he may be desirous of being in a position to take advantage of an increased demand in another market to expand his business, and even though at any time sales might be small in these other markets, it is important that he have con-
4890 tacts in those markets, be already there with his salesmen and his selling organization in order that he might take advantage of the changes in demand and supply as they come. A seller may also go out into other markets simply in order to increase the volume of his sales and by increasing the volume of his sales reducing the unit cost and spreading the overhead and so making his sales more profitable up to the limit of capacity of his plant, and perhaps even find it possible to enlarge the plant to advantage.

Q. Will you tell me whether or not you think it is correct to say that the seller sells all he can in the most favorable market and then disposes of the surplus in other markets?

A. No. That is a common statement which is not quite correct. That is, he does not sell all he possibly can in his first market and then have a surplus to sell in other markets, because, as I have said, before he has sold all that he possibly could, with a necessary reduction of price, it becomes more profitable to sell in some other market where he can get a better price.

Q. If a manufacturing company seeks to sell similar merchandise simultaneously in two or more markets under competitive economic conditions, will the company neces-

sarily receive the same net amount per unit for sales in each market?

Mr. MacIntyre: I object to that. It calls for a statement of facts rather than economic theory. Facts in one case will be different from those in another. They cannot
4891 be universally applied.

Trial Examiner Norwood: I think you have stated sufficient factors there.

Mr. Moore: The question is hardly more than a mathematical calculation, but I would like to have it in the record.

Trial Examiner Norwood: Read it.

(Question read.)

Mr. MacIntyre: I submit that that calls for a statement of facts applying to a particular situation. It is not a part of economic theory.

Trial Examiner Norwood: He is asking him for an application here of economic principle.

Mr. MacIntyre: Well, the facts aren't sufficient to give an answer anyway even for factual statements.

Trial Examiner Norwood: I think we will have to permit the expert to determine that and answer it on his own responsibility.

Mr. Moore: I think, Your Honor, that counsel for the Commission overlooks or just fails to give to the word "necessarily" its proper meaning.

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. The seller would not necessarily receive the same net amounts. The net amounts would depend upon
4892 two factors, the prices received in the different markets, and the cost of the freight from his point of manufacture to those different markets, and it would be only a very rare coincidence that these two factors would result in identical net amounts received.

Trial Examiner Norwood: You mean the price in the outside territory as determined by transportation?

The Witness: Yes; and other factors of demand and supply. That is, I assume that there are delivered prices in these different markets, and the seller receiving those delivered prices must then subtract the cost of freight to the market in order to determine the net amounts to which the question referred.

Mr. MacIntyre: May I ask that the first part of that question be read again—

Trial Examiner Norwood: Read it.

Mr. MacIntyre: —the original question to which these are answers?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

(Record read as follows:

"Q. If a manufacturing company seeks to sell similar merchandise simultaneously in two or more markets under competitive economic conditions, will the company necessarily receive the same net amount per
4893 unit for sales in each market?")

Trial Examiner Norwood: That is, the sales in the outside market and in his home market?

Mr. Moore: Well,—

Trial Examiner Norwood: You understood it that way, didn't you?

The Witness: Well, I understood also there might be several outside markets.

Trial Examiner Norwood: Yes.

Mr. Moore: Well, off the record, if you please.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

By Mr. Moore:

Q. In order to have a true market in the economic sense, is it necessary for buyers and sellers to assemble in one spot to carry on negotiations?

A. No, sir; that is not necessary. As I have previously said, buyers and sellers may be represented by agents, brokers, and they may be in communication by telephone, telegraph, mail, and so forth, and even when they are in the market they need not necessarily meet at one spot. The buyers may go about to the places of business of the sellers or the sellers or their salesmen may go about to the offices of the buyers.

Q. And when you say "the buyers go about" you mean, I take it, representatives, that is, salesmen of the buyers?

4894 A. Well, I would not say—

Mr. MacIntyre: Object.

A. —salesmen, but purchasing agents.

Trial Examiner Norwood: Wait a minute. Don't answer the question.

By Mr. Moore:

Q. I mean of the sellers.

I beg your pardon.

Trial Examiner Norwood: Wait a minute. The counsel has objected.

Don't answer the question when the counsel objects.

The Witness: I beg your pardon.

Mr. MacIntyre: I object to counsel explaining to the witness what the witness means by his answers.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Moore: Strike the question. Strike the answer also, if you please.

Trial Examiner Norwood: Strike it.

By Mr. Moore:

Q. What do you mean, Professor, by the phrase that "Buyers go about"?

A. I mean that either the buyers go about or their representatives.

Q. And in the case of sellers going about?

4895 A. Sellers or their salesmen.

Q. From your studies in economics, what is your understanding as to the procedure by which negotiations for the sale of manufactured goods commonly are carried on in the United States?

Mr. MacIntyre: Now,—

Trial Examiner Norwood: Wait a minute.

Mr. MacIntyre: I object to that. It calls not for a statement of economic theory, but for a statement of fact as to how business is carried on in one industry, two industries, or half a dozen industries in this country today, and there has been no foundation laid to show that this witness knows how those things are carried on. He has been tendered here and accepted as an expert economist, and if he is now to be permitted to testify on factual matters in dealing with the manner in which Industry A or Industry B or C is carried on, I think that we should have the foundation laid before he is so permitted to testify.

Mr. Moore: Mr. Examiner, it seems to me that counsel for the Commission has really failed to understand what economics—the science of economics is. It isn't, as I understand it, something that somebody ought to do. It is the history of what people do do, and this question is directed at that and not at what something ought to do.

We ask him what the procedure is in economics.

4896 Mr. MacIntyre: But, if Your Honor please, we have had this question up with experts recently and, as I recall it, with this witness in a previous case here where he testified as an expert, and on cross-examination on that very point we found that he was unable to tell us how industry A actually operated. He said he didn't know.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: And how Industry B operated. He doesn't know the facts, the details of how they operated.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. MacIntyre: That does not call for economic theory. It calls for facts, and why they do these things would also be a question that he cannot answer, and he has demonstrated it on a previous appearance on the stand.

Trial Examiner Norwood: I think the counsel is right about that.

Mr. Moore: Mr. Examiner, this is a question which merely says "Under normal conditions, what is your understanding from your studies of economics—"

Trial Examiner Norwood: Now, you can qualify the witness—he can state anything he knows. You may qualify him about that and give it as factual testimony, and you may do so.

We will have a five minutes' recess.

4897 Mr. Moore: Well, I submit we have qualified him to answer that. He is an economist. He has shown that he has studied these very things. We are asking him simply like we would call, say, a general, under certain conditions what will a general do?

Trial Examiner Norwood: I think you can qualify him, certainly, to give that testimony.

Objection sustained.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. Moore:

Q. Professor Fairchild, in your studies of economics, have you observed the procedure by which negotiations for the sale of manufactured goods commonly are carried on in the United States?

A. Yes, sir. Part of my study of economics has involved observing such things, resulting in a general knowledge of the way in which such economic forces are working in prac-

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tice, without, of course, acquiring specialized technical knowledge in particular fields.

Mr. Moore: Mr. Examiner, I would like to ask the previous question.

Trial Examiner Norwood: Read that previous question.

(Question read as follows:

"Q. From your studies in economics, what is your
4898 understanding as to the procedure by which negotiations for the sale of manufactured goods commonly are carried on in the United States?")

Mr. MacIntyre: May I inquire, is that for a general statement of something, or are we now going into facts?

Trial Examiner Norwood: Are you acquainted with the customers and manner of doing business in this field about which he is questioning you?

The Witness: Yes.

Trial Examiner Norwood: Factually?

The Witness: Yes, I am.

Trial Examiner Norwood: Then, you know the method they do employ?

The Witness: Yes, sir; I do.

Trial Examiner Norwood: Well, I should think your question should be amended to say "From your experience and your studies in economics." He can give us this factual information.

Mr. Moore: Very well. I will change the question to read that way, "From your experience and studies in economics."

The Witness: Could I hear the question now?

Trial Examiner Norwood: Read the question.

Mr. Moore: As amended, please.

(Question read as follows:

4899 "Q. From your experience and studies in economics, what is your understanding as to the procedure by which negotiations for the sale of manufactured goods commonly are carried on in the United States?")

A. It is my understanding that such negotiations are commonly carried on by means of salesmen, assisted sometimes by advertising, or circulars sent by mail, and so on.

By Mr. Moore:

Q. If negotiations for sales are handled by traveling salesmen, does that, in your opinion, indicate that the market is not a genuine market in the economic sense?

A. No, it does not.
Q. Does it indicate a lack of competition?
A. No, it does not.
Q. In your opinion, is the employment of salesmen and advertising economically burdensome to the public?
Mr. MacIntyre: Now, I object. It calls for a statement that would not only be incompetent but irrelevant and immaterial to the issues here.
Trial Examiner Norwood: I think it goes into another question here. It does not touch the issues here as to whether it is economically sound to employ salesmen.
Do you think that is necessary here?
Mr. Moore: Well, it seems to me that the question is entirely competent, because we must not overlook the
4900 fact that this witness is called as an expert.
Trial Examiner Norwood: Yes.
Mr. Moore: And the question relates to economics. It is asking for his opinion.
Trial Examiner Norwood: Well, it is a question that bears on this definition of "competition."
Mr. MacIntyre: But, if Your Honor please, the complaint does not charge that the Respondents are unlawfully employing salesmen.
Mr. Moore: I will withdraw the question.
Trial Examiner Norwood: The question is withdrawn. Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.
Mr. Moore: May I proceed?
Trial Examiner Norwood: Certainly.

By Mr. Moore:

Q. When a manufacturing company employs traveling salesmen, would you, as an economist, normally expect the employer to give the salesmen instructions regarding the prices and terms of sale as well as other instructions, or to leave it to the judgment of each salesman as to what prices he should quote and what terms of sale he should offer?
Mr. MacIntyre: I object. That calls for a statement of fact and of psychology, and not of economic theory.
4901 One man would do one thing, and another would probably do something else.
Trial Examiner Norwood: Read the question.

(Question read.)

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Trial Examiner Norwood: Now, I do not think it is necessary to bring out things like that. You can show this by any witness, what is usual with respect to salesmen. I think this is obvious.

I overrule the objection. Let him answer the question.

Go ahead.

A. I would expect the seller to give instructions to his salesmen about these matters, and not to leave them to the individual judgment of the salesmen.

By Mr. Moore:

Q. From an economic standpoint, can a true market exist when negotiations on the part of sellers are handled by salesmen acting under instructions from their respective employers?

A. Yes, a true market can exist under those conditions.

Q. Now, Professor, I am going to ask you a hypothetical question. I shall later ask you other hypothetical questions, and inasmuch as this is the first of such questions I shall call it and hereafter refer to it as hypothetical question A.

In answering hypothetical question A I shall ask you to assume certain facts.

4902 Mr. Moore: Mr. Examiner, for ready reference and saving of time, we have prepared a statement of facts, which I will hand to the witness, and which I would like to have included in the record, the same as if it were read at length.

Trial Examiner Norwood: Is this all the statement of facts?

Mr. Moore: That is all the statement of facts.

Mr. MacIntyre: May we be off the record for a minute?

Trial Examiner Norwood: Yes. Off the record.

(Discussion off the record.)

Trial Examiner Norwood: We will take a five-minute recess.

(There was a short recess taken.)

Trial Examiner Norwood: On the record.

The assumptions are as follows:

1. Rigid steel conduit is made from standard steel pipe by first putting it through a cleaning and smoothing process and then through a coating process, dependent upon the nature of the coating applied to it. It is produced in two types, namely, black enameled conduit and galvanized conduit. Both types are produced in various sizes ranging from one-fourth inch to six inches inside diameter. Gal-

vanized conduit is customarily sold at a somewhat
4903 higher price than black enameled conduit. Except for use under special local conditions which may require the use of one type or the other, the choice between one type and the other is governed largely by the preference of the user. Each type as produced by different manufacturers is a standardized commodity which must meet minimum specifications of, and is subject to inspection by, The Underwriters Laboratories, Inc., sponsored by the National Board of Fire Underwriters. In the further statement of facts to be assumed, the two types of rigid steel conduit will be together referred to as conduit.

2. Conduit is used in the construction and reconstruction of buildings to constitute raceways through which insulated electric wires may be drawn.

3. There are in the United States eleven manufacturers of conduit which are independent each of the others and the largest of which has a productive capacity of less than 20 percent of that of the entire industry. The conduit manufacturing plants of seven of them, including at least two of the principal conduit manufacturers and comprising in the aggregate over 75 percent of the productive capacity of the conduit industry, are located either at Pittsburgh, Pa., or within an area surrounding Pittsburgh, from which freight rates to destinations outside of that area are in general the same as freight rates from Pittsburgh to those destinations respectively. One other of such eleven conduit manu-
4904 facturers has its principal conduit manufacturing plant at Struthers, Ohio, and a second such plant at Indiana Harbor, Ind., which is within the Chicago freight-rate area. The conduit manufacturing plants of the three other conduit manufacturers are located, respectively, at Cohoes, N. Y., Conshohocken, Pa., and St. Louis, Mo.

4. Each of the above-mentioned conduit manufacturing plants is located near a center of production of standard steel pipe, which is the principal raw material used by most of the manufacturers. The conduit manufacturing plants located at Struthers, Ohio, and at Indiana Harbor, Ind., are operated in connection with fully integrated steel plants at which standard steel pipe is produced. The conduit manufacturing plant at Cohoes, N. Y., is operated in connection with a pipe mill which manufactures standard steel pipe from skelp which it purchases as its raw material therefor.

5. Conduit is sold by the manufacturers thereof almost

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entirely through dealers. The dealers are located in various centers in all the States of the United States. Most of the manufacturers follow the practice of maintaining consigned stocks in the possession of dealers. By far the greater part of the sales of conduit are made out of such consigned stocks. On large construction jobs, however, shipments often are made directly from the mill. Some
dealers buy conduit outright from the manufacturers
4905 and carry their own stocks thereof and do not have
consigned stocks. The delivery of conduit on a large construction job customarily is scheduled closely in order to have it on hand at just the time when installation is to be made, thereby avoiding the inconvenience of handling and storage which would result from premature delivery or the disruption of work which would occur if it were not available when needed.

6. Conduit is sold by or through the dealers, chiefly to electrical contractors.

7. The total demand for conduit in the United States varies with fluctuations in building activity and the demand therefor in any given area likewise varies with the fluctuations in building activity in that area. The variations in building activity in one area, and hence the demand for conduit in that area, do not generally correspond either seasonally or cyclically with the variations therein in other areas.

8. Some of the larger manufacturers of conduit maintain branch offices in various parts of the United States and all of the manufacturers thereof employ salesmen or manufacturer's agents to promote the sale of their conduit through solicitation of orders for conduit from electrical contractors and dealers, architects, and owners of buildings. Each of the manufacturers of conduit has in connection
with its conduit business elements of cost which re-
4906 main substantially constant under varying rates of
production and sale and which together constitute a substantial part of the total cost of manufacturing the conduit manufactured by it, the percentage of such total cost represented by such element of cost varying with the rate of production.

9. Because the cost of conduit is normally only a small part of the total cost of a building project, the demand for conduit is not materially influenced by the prices payable for it. The cost of transportation is a substantial part of

the cost of conduit delivered at any point of use or resale which is at all remote from the place of the manufacture thereof. Differences in quality between conduit of the same type sold by different manufacturers and in the service furnished by such manufacturers to their customers, although stressed by salesmen and through advertising, are as a rule not such as to induce buyers to pay more for the conduit produced by one manufacturer than for that produced by another manufacturer.

10. Conduit was first manufactured in or near Pittsburgh, Pa., by two independent companies, both of which began production of conduit there in 1897. Within the next few years other manufacturers began the production of conduit also in the Pittsburgh district.

11. Conduit has usually been quoted and sold at destination prices, although from time to time some manu-
4907 facturers have, upon request, quoted and made sales on an f.o.b. mill basis. It has been the experience of the manufacturers of conduit that their customers generally prefer delivered prices rather than prices f.o.b. mill. Moreover, it has been the custom for manufacturers of conduit to prepay the freight on their conduit shipments to their consigned stock agents in order that such agents may not have any property interest in such stocks until sold.

12. The manufacturers of conduit in the Pittsburgh area in quoting and selling conduit delivered at points to which shipment must be made from their plants commonly quote prices therefor equivalent to the price at Pittsburgh, plus the freight from Pittsburgh to the respective places of delivery of the conduit and sell conduit at delivered prices so determined. Conduit produced at the other points outside of the Pittsburgh area previously stated is likewise commonly quoted and sold at the prices current at Pittsburgh, plus railroad freight from Pittsburgh to the place of delivery. This method of quoting prices is commonly known and will hereinafter be referred to as the basing-point method of quoting prices.

13. Up to about 1924 standard steel pipe was generally sold at prices based on Pittsburgh as the sole basing point. Beginning in 1924, standard steel pipe was sold at prices based on Gary, Ind., as a basing point, as well as at
4908 prices based on Pittsburgh. In the same year the manufacturer then producing conduit at Evanston, Ill., inaugurated the practice of also quoting and selling

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conduit at delivered prices determined by adding freight from Evanston to the respective places of delivery to the price at Evanston named by such manufacturer, which price was, in the case of each of the two types of conduit, $4 per ton above the current published price of such conduit at Pittsburgh. The quoted prices were based on Pittsburgh or Evanston as the basing point, according as the one or the other would give the lower delivered price. At that time the price of standard steel pipe at Gary, from which Evanston is not far distant, was $4 per ton higher than the price of such pipe at Pittsburgh. The differential of $4 per ton in the price of conduit at Evanston over the price of conduit at Pittsburgh was less than the freight charge per ton on conduit shipped from Pittsburgh to Chicago or to Evanston.

14. In the latter part of 1934, a manufacturer then producing conduit in Chicago began quoting and selling conduit at delivered prices determined by adding to the price at Chicago published by such manufacturer freight from Chicago to the places of delivery. Freight rates from Chicago and Evanston, except to certain points in the immediate vicinity of Chicago or Evanston, were the same. Shortly after 1934, Evanston ceased to be a basing point for conduit.

4909 15. The manufacturers of conduit that had their plants in the Pittsburgh area followed the practices inaugurated by the above-mentioned manufacturers at Evanston and Chicago and also quoted delivered prices for conduit based on Evanston as the basing point beginning in 1924 and on Chicago as the basing point beginning in 1936.

16. Each of the manufacturers of conduit whose conduit manufacturing plants were, as previously stated, at locations other than Pittsburgh, Evanston, and Chicago, from the time of beginning the manufacture and sale of conduit, met the delivered prices that such manufacturer found current from time to time by also quoting delivered prices based on Pittsburgh, and later on Evanston and Chicago, as basing points. Each such manufacturer has since continued to quote prices for and sell conduit at delivered prices so determined. Thus, there came into use in the conduit industry two basing points.

17. In the year 1912 or 1913, the two largest manufacturers of conduit, both located in the Pittsburgh freight-rate area, became exclusive "rigid conduit agents" for

one of the large manufacturers of standard steel pipe under an arrangement (which lasted several years) whereby these two conduit manufacturers converted pipe furnished to them by their principal into conduit and sold such conduit for the account of their principal, the agents retaining a percentage of the proceeds as compensation for their services. For some years
4910 prior to 1913, the above-mentioned pipe manufacturer had been announcing quotations of pipe prices which were based on Pittsburgh as a basing point, and when the two conduit manufacturers became conduit agents for the pipe manufacturer, they began the announcement of conduit prices on a similar basis through the use of cards, the identifying numbers of the cards issued by the one of such conduit manufacturers being the same as the identifying numbers of the cards issued by the other of them. This practice was followed by the other smaller conduit manufacturers, and since that time manufacturers of conduit generally have followed the practice of announcing prices by issuing price cards, the price cards of all manufacturers in effect at corresponding periods bearing the same identifying numbers, with exceptions occurring when one or more manufacturers have omitted to issue price cards bearing a number corresponding to the number of a new price card issued by another manufacturer or other manufacturers. In the event of such an omission, the manufacturer not issuing the new price card usually continues to sell on the basis of its old card less such discounts or concessions as it may feel necessary to offer to meet competition.

18. There has been no substantial price leadership condition among manufacturers in the conduit industry. Different manufacturers of conduit from time to time have announced changes in the price quotations of conduit
4911 which have not been invariably followed by all other conduit manufacturers. Any conduit manufacturer, no matter how small, can initiate an effective decrease in price. In cases where a conduit manufacturer has issued a new price card showing increased price quotations, such prices have rarely become effective, unless all competing conduit manufacturers have followed the action and issued new price cards showing the same increased price quotations.

19. Deviation from card prices in the sale of conduit have been common, except in periods of extremely low

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prices or when the demand for conduit has approximated or exceeded the productive capacity of the conduit industry. Manufacturers commonly allow discounts below their published prices, and the knowledge of these price cuts by competitors, especially in the larger centers or on large orders, often leads to still further price concessions. Manufacturers have observed that, if a special price is quoted to one customer, other customers, upon learning of that fact, demand similar concessions.

20. Manufacturers maintaining consigned stocks in the possession of dealers usually enter into forms of contracts with such dealers which provide that sales of conduit out of such consigned stocks shall be made at prices no lower than the manufacturers' published prices.

21. Changes in announced card prices customarily
4912 follow changes in prices of pipe, the principal new material for the manufacture of conduit, and increases in the price of conduit have also followed increases in the price of zinc, which is used in the manufacture of galvanized conduit, and increased labor costs. Reductions in published conduit prices have sometimes followed periods of selling below card prices in the principal conduit markets. During the last eight years there have been as many as fifteen changes in the quotations of conduit prices published by various conduit manufacturers, the periods of time between the dates of such changes varying from less than a month to approximately a year and a half.

22. On specific building contracts dealers and contractors are protected against an increase in price for varying periods of time, and they are given the benefit of the new low price in the event of any decline in price. Upon an increase in price, purchasers of conduit other than under such contracts are also protected by being given an opportunity for a certain period of time to place orders at the old prices.

23. In submitting bids to governmental agencies for public openings, where the inquiries specify delivered prices, the policy of most manufacturers of conduit is generally to bid their card prices. The reason most often given in the record for that policy is that bids so
4913 submitted will become generally known and that, if a conduit manufacturer submits a bid that is less than its card price, that fact will lead to requests for similar concessions on the part of the customers of such

manufacturer and thereby result in a general reduction in price.

Mr. MacIntyre: Now, if Your Honor please, I want to state that I object to any question being propounded to the witness based—

Trial Examiner Norwood: You better wait till the question is asked and then you object.

Mr. MacIntyre: May I object to the statement itself?

Trial Examiner Norwood: No. He is asking a question here. This is part of his question and he has not finished his question. Let him go ahead.

Mr. Moore: Mr. Examiner, to furnish the basis for our first hypothetical question which I shall ask, I would like to have the last previous question read.

Trial Examiner Norwood: Read it.

(Question read as follows:

"Q. From an economic standpoint, can a true market exist when negotiations on the part of sellers are handled by salesmen acting under instructions from their respective employers?")

4914 By Mr. Moore:

Q. Now, Professor, in answer to that question, you stated, I think, yes, that a true market can exist when negotiations on the part of sellers are handled by salesmen acting under instructions from their respective employers.

A. Yes, I so understood.

Q. Now, with the facts in mind as set forth that statement of facts, I ask you the following question:

In your opinion as an economist, on the facts assumed in the statement, could such a marketing plan logically develop and continue to exist in an industry where competition prevails?

Mr. MacIntyre: I object, on the ground that the question is based upon a hypothesis which does not present accurately a showing of what the record is as to the practices, conditions, and circumstances existing in the industry with which we are here concerned, and it does not present an accurate showing because it states facts, or attempts to do so, which are not shown by the record; it fails to state other facts which, if included within those which are stated, would show what the true meaning of those which are included in the statement; and it goes

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further than that and misstates facts which are shown by the record.

Trial Examiner Norwood: Yes.

Mr. Moore: Well, I submit, Your Honor, with
4915 some feeling that when counsel for the Commission challenges counsel on our side of the table in such a way as that it is his duty to point out to you wherein the charge is warranted.

Trial Examiner Norwood: Well, I am going to ask him to do that, yes.

Mr. Moore: After all, as sworn officers of the courts, we do not intend to come here and tell you that a statement is a statement of facts, when he says they are not a statement of facts and they are misleading or inaccurate.

Trial Examiner Norwood: Counsel should not take that as a personal statement. Counsel for the Commission did not mean it in that way at all.

Mr. Moore: I resent such statements as that.

Trial Examiner Norwood: Inasmuch as it is the evident intention of the Respondents to base several hypothetical questions on this statement of facts here, I shall ask the counsel for the Commission to take the time and study it over and then point out just what statements here he contends are not based on some evidence that has been received.

Now, whether or not that evidence is true is not the issue; it is whether or not there is some evidence in the record to substantiate the statements made.

Now, the question that other statements are left out does not contain grounds for objection at all. He may state half of the picture, and if it is based on the
4916 record, he may have an opinion on that, and the counsel for the Commission may later state the other half of the picture.

Mr. MacIntyre: If Your Honor please, does that ruling mean that this statement of assumed facts may be presented to this witness when it includes in it statements which were made by witnesses called by Respondents on direct examination and which were in turn refuted on cross-examination without taking into account the refutation on cross?

Trial Examiner Norwood: Well, I hardly think that. I think I should strike that evidence, and then it cannot serve as a basis. But certainly the fact that Respondents

gave the evidence here does not diminish its value as a basis for my ruling here.

Mr. MacIntyre: Well, my statement—

Trial Examiner Norwood: As to the truth of this evidence.

Mr. MacIntyre: My statement—

Trial Examiner Norwood: That has to be decided later.

Mr. MacIntyre: My statement in objecting to this went in part to the fact that it is based in some instances solely upon statements made upon direct examination, without showing what the picture is when the direct and the cross is taken into account.

Trial Examiner Norwood: Well, if it is in the 4917 record there, that is sufficient as a basis. Of course, now, when you convince us that the evidence is not true, then you have defeated the conclusion.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: We will recess until 1:30 in Room 388.

(Whereupon, to 12:05 o'clock p. m., a recess was taken until 1:30 o'clock p. m. of the same day.)

4918 Afternoon Session.

Room 388.
1:30 P. M.

Trial Examiner Norwood: Hearing come to order.

We will hear from the counsel for the Commission with respect to this hypothetical question which is pending.

Mr. MacIntyre: I want to say that I haven't had a chance to study the record, references to which are given. I have, however, looked further over the question or statement of assumed facts. In the light of what I have just said, therefore, I am not prepared to state in full and finally the objections specifically which I would like to state, but I am prepared at this time to make some further comments bearing upon the objections which I have made up to this time.

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: I want to say that as to the statement near the center of the first page to the effect that each

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type of conduit as produced by different manufacturers is a standardized commodity is not borne out by the record. In fact, there is testimony by some of the witnesses called by the Respondents to the effect that their conduit differs in quality from the conduit produced by others.

On page 2, that is, the beginning of paragraph 3, I do not consider the statement set forth there as being in accord with the facts in the case. Further, it assumes as a fact a perfect defense for the Respondents, that is, one of lack of collusion, plenty of competition, and no
4919 monopoly.

Trial Examiner Norwood: Well, now, do you claim that there is no evidence in the record on which that assumption is based?

Mr. MacIntyre: No, if Your Honor please. I will admit that some witnesses who are Respondents here and who were called in their own behalf by their counsel specifically denied that they were carrying on a monopoly and that they were independent—and contended that they were independent, but I do contend that what they denied there and contended there is absolutely contrary to the record.

Trial Examiner Norwood: That isn't the point here now. That is what you may contend to the Commission. I just want you to tell me any of these assumptions here which you say are not based on anything that is in the record, any evidence. It is understood that probably nine-tenths or maybe—nine-tenths of the statements, or maybe all of them, you are controverting, you are claiming that they are not true and you are bringing forth evidence which you contend shows that they are untrue. That isn't the question before us now.

Mr. MacIntyre: The next sentence is not supported by the record.

Mr. Moore: What is the next one?

Mr. MacIntyre: In fact, it is contrary to the record.

Mr. Moore: What is the next one, please?

4920 Mr. MacIntyre: The one that reads that "The conduit manufacturing plants of seven of them, including at least two of the principal conduit manufacturers, and comprising in the aggregate over 75 per cent of the productive capacity of the conduit industry, are located either at Pittsburgh, Pennsylvania, or within an area surrounding Pittsburgh, from which freight rates to destinations outside of that area are in general the same as

freight rates from Pittsburgh to those destinations respectively."

Mr. Moore: What is your—

Mr. MacIntyre: That statement is contrary to the record.

Mr. Moore: What part of it is contrary to the record? Is it all contrary?

Trial Examiner Norwood: In general, I think it is a little broad for the testimony that has gone in on that point. Some rates are shown to be the same from Pittsburgh to some of the points just outside, but I am not sure, but it seems to me that other rates are shown to be different to points outside. Is that the case or not?

Mr. MacIntyre: I have never contended that rates from Pittsburgh to outside points, whether from one mill or another, would be different from any other mill in Pittsburgh to outside points, but the record doesn't go any further than that.

4921 Mr. Moore: Does this—

Mr. MacIntyre: And the statement here does.

Mr. Moore: In what—

Trial Examiner Norwood: That is as far as this goes,—

Mr. MacIntyre: As I see it—

Trial Examiner Norwood: —in general the same as freight rates from Pittsburgh to those destinations respectively.

Mr. MacIntyre: Well, no, Your Honor. That statement goes back to the word "seven"—seven—seven plants.

Mr. Moore: Well, do you—

Trial Examiner Norwood: No; no, I don't think so.

Mr. Moore: What is there that is in that now?

Mr. MacIntyre: Well, I stated my objection, now, and the grounds for it.

Mr. Moore: Well, I know, but we are entitled to know. You have read half a dozen statements from one sentence.

Trial Examiner Norwood: Wait a minute.

Mr. Moore: Now, what of those are inaccurate? Are there more than seven? Less than seven?

Mr. MacIntyre: Well, I haven't counted them since noon, but I do know definitely that you have no testimony which supports that statement as written, none.

4922 Trial Examiner Norwood: All right. Go ahead.

Mr. MacIntyre: The last sentence in paragraph 8 of this statement, of course, is not a factual statement but

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an argument; and the argument is founded upon a false premise, both as to theory and practice. It is objected to for that reason.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. MacIntyre: The first sentence in paragraph 9 is objected to for the same reason that the last sentence in paragraph 8 is objected to and on the same grounds. It is an argument based upon a false premise. There is no evidence in the record to show that. There are some evidentiary facts from which this is argued, but not that statement. It is not an inference; it is an argument.

The same objection and on the same ground as made to the last sentence in paragraph 9, and also for the further ground that it misstates the record on the point that salesmen stress quality, differences in quality. There is nothing in the record to show that that is done.

Mr. Moore: Mr. Examiner, may I make just this observation?

Trial Examiner Norwood: Well, let him finish his and then you can reply.

4923 Mr. Moore: Well, I am not replying. It seems to me it is hardly fair to you or anybody else to go on this way. He states that the first sentence in paragraph 9—there is nothing in the record, and yet we have given him ten citations of the record to support that statement, and I say that for him to say that and then say that he hasn't examined the record is going pretty far.

Trial Examiner Norwood: Well, just let him finish.

Mr. Moore: All right.

Mr. MacIntyre: Object to the first statement in paragraph 10 on the ground that it assumes and argues, contrary to the record, that these Respondents maintain no monopoly; they are all independent, and are competitive. It is also my contention that the second sentence in paragraph 11 is not borne out by the record. The same is true with respect to the second sentence in paragraph 12. That is, in so far as it mentions the current prices at Pittsburgh.

I object to the second sentence in paragraph 13 on the ground that it assumes that a single manufacturer acted in the manner described.

The first sentence in paragraph 16 is objected to because

there is not support in the record for that statement; and, consequently, no support in the record for the succeeding sentence because it is based upon the first, and an argument based upon the first.

4924 Mr. Robison: Off the record.

(Discussion off the record.)

Mr. MacIntyre: Let us go on the record.

My statement just made covers all three sentences in paragraph 16.

The last part of the second sentence in paragraph 17 is not supported by the record. The record is contrary to it.

Mr. Stewart: Would you mind saying what that is, because that doesn't mean anything, the last part of the second sentence.

Trial Examiner Norwood: Read it.

Mr. Stewart: What is it you are talking about?

Trial Examiner Norwood: Read the sentence.

Mr. MacIntyre: "* * * the identifying numbers of the cards issued by the one of such conduit manufacturers being the same as the identifying numbers of the cards issued by the other of them."

Mr. Moore: Off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Back to the record.

Go ahead.

Mr. Moore: Off the record.

(Discussion off the record.)

4925 Mr. MacIntyre: May we go back to the record?

Trial Examiner Norwood: Go back.

Mr. MacIntyre: Same objection on the same ground is made to the second sentence in paragraph 18.

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: Third sentence.

Mr. Moore: Just a moment.

Off the record, please.

(Discussion off the record.)

Mr. MacIntyre: The same objection on the same ground is made to the succeeding sentence in paragraph 18.

Mr. Moore: Which sentence is that, please?

Mr. MacIntyre: The same objection on the same ground is made to the first sentence in paragraph 19. The same objection on the same ground is made to the second sen-

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tence in paragraph 19, and to the third sentence in paragraph 19.

Mr. Stewart: That makes a whole paragraph, then.

Mr. MacIntyre: And particularly in that sentence to the word "often" as used there.

Same objection on the same ground is made to the first sentence in paragraph 21.

I believe that concludes my statement.

Trial Examiner Norwood: All right.

Mr. MacIntyre: But I want it understood that I
4926 do not consider that this is what I would be inclined to do if I had had an opportunity to completely study the record on this.

Trial Examiner Norwood: I will say, off the record—

(Discussion off the record.)

Trial Examiner Norwood: With that change, I shall overrule the objection and ask the witness to answer the question.

Now, what was the query part of it?

Mr. Moore: I think perhaps we had better have the question read.

(Discussion off the record.)

Mr. MacIntyre: I want it shown on the record that my objection goes to the question even as amended.

Trial Examiner Norwood: Yes.

(Record read as follows:

"Q. Now, with the facts in mind, as set forth in that statement of facts, I ask you the following question: In your opinion, as an economist, on the facts assumed in the statement, could such a marketing plan logically develop and continue to exist in an industry where competition prevails?")

The Witness: I think I have already answered that question, but the answer is "yes," it could logically develop and continue.

By Mr. Moore:

4927 Q. Now, Professor, I wish on further questioning to refer to the basing-point method of quoting prices. I would like to have you tell us what you understand to be a basing-point method of quoting prices.

A. Well, I understand that a seller is employing the basing-point method when he offers and sells his product at delivered prices, and some of these delivered prices are based on points other than the locality of his own mill.

Q. Would you say on points necessarily or on a point?

A. Well, strictly, I should say point or points.

Trial Examiner Norwood: Yes.

Q. What conditions and characteristics of an industry would lead, in your opinion as an economist, naturally to the adoption of the basing-point method of quoting prices?

A. I should think the principal conditions would be something like this: First, the product would be a homogeneous or standardized product. Second, there would be a state of competition in the industry. Third, there would be a relatively small number of manufacturers or producers and some of them at least would have a volume of production of very considerable size, and they would be distributing their product to a large number of buyers widely scattered geographically.

Fourth, the producers would have plant capacity in excess of what would be required to meet the local
4928 demands at their particular points of location.

Fifth, the product would be relatively—relatively a heavy product in relation to its value, so that the cost of freight would be a substantial element in the total cost of delivering the product at the—at its destination. At the same time, the product should not be so very heavy in proportion to value that it could not have more than just a local market; that is, that it would not be profitable to ship it very far distant from its place of manufacture.

And, sixth, there would be a considerable element of overhead cost, cost of production of the product. This would make it profitable from time to time for a producer to reach out and sell in other markets than his local market and in a number of differently located markets, and to do so even though in some of those markets the selling price might not be sufficient to cover all of the costs, including a proportionate share of the overhead. The producer might find it possible to cover all of the overhead by sales in certain markets, and thereafter find it profitable to sell in other markets at prices which, while covering the variable costs, were still not high enough to cover all of the proportional share of the overhead.

I think that covers the principal conditions.

Q. What do you mean by the "local market of a manufacturer or distributor"?

4929 A. Well, I meant the market at which—at his own place of location where the cost of freight would not be involved.

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Mr. MacIntyre: Pardon me a minute. May we go off the record for a minute?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

By Mr. Moore:

Q. I am not quite clear about your last answer, Professor. I don't visualize the limitations of a local market as distinguished from some other market.

A. What I had in mind was that a producer might have certain markets in which he would have a more advantageous position as a competitor than other markets and that in those markets he might be able to cover—to charge a price which would return his total costs, including the overhead, and that in other markets he would therefore be willing to sell at a lower price than sufficient to cover the total costs, including a proportionate share of the overhead.

Q. And when you say "more advantageous," I take it you refer to what? His mill net return?

A. I refer to the state of competition, other sellers, which permits him to have to pay—to charge a price which will give him a mill net which will cover all of his cost.

Q. In your opinion, from the facts assumed in 4930 hypothetical question A, do the conditions which logically would lead to the use of the basing-point method prevail in the rigid conduit industry?

A. I think they do.

Q. Is the basing-point method substantially one that you, as an economist, would recognize as a competitive method of pricing and selling merchandise?

Mr. MacIntyre: Just a moment. I did not have an opportunity to object to that preceding question before it was answered. I, therefore, now move to strike the question and the answer. It merely asked the witness to compare his set of reasons which he has already placed in the record as to why he considered—what he considered to be causes on the part of anyone to adopt the basing-point system, and then he is asked to compare that set of causes as he has outlined them on the record with the statements contained in this long hypothetical question A and to see whether or not they coincide. Well, the Commission and the courts can do that.

Trial Examiner Norwood: I think that is what he asked him to do.

Mr. MacIntyre: Yes, but his comparison is incompetent, irrelevant, and immaterial, because the Commission and the courts can compare them. They are in evidence now.

Trial Examiner Norwood: Read the question and the answer.

4931 (Question read as follows:

"Q. In your opinion, from the facts assumed in hypothetical question A, do the conditions which logically would lead to the use of the basing-point method prevail in the rigid conduit industry?

"A. I think they do.")

Trial Examiner Norwood: Motion denied.

Mr. MacIntyre: May we have the last question read? I have lost sight of that since the statement.

Trial Examiner Norwood: Is there a pending question now?

Mr. MacIntyre: Yes, there is a pending question.

Trial Examiner Norwood: Read the pending question.

(Last question read.)

A. Yes, I would recognize it as a competitive method.

By Mr. Moore:

Q. According to any business behavior observed by you as an economist, could the use of such a method arise naturally as the result of competitive forces?

A. Yes. I think any seller could think of this method and put it into operation without consultation or collusion with any of his other competitors.

Q. In order to have such a method used, would certain of its elements have to be planned in concert with other manufacturers or sellers?

4932 Mr. MacIntyre: I object. It calls for incompetent testimony. This witness has not been shown to be qualified to state whether the operators in this industry could have done what they have done without getting together and acting in concert and in accordance with an agreement. It does not call for economic theory at all. It calls for a statement of fact, and the witness has not been shown to have any knowledge of the facts.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: In other words, could this simply be the result of the operation of economic forces?

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Mr. Moore: Right.

Trial Examiner Norwood: You can answer it from that statement.

Objection overruled.

A. I think this could be the natural result of economic forces and would not require any discipline or compulsion on the part of the industry. The essential thing required is that the sellers have a very considerable approach to complete information about the conditions.

Trial Examiner Norwood: Yes.

A. (Continuing.) Having that information, then any seller could adopt this basing-point policy and he could continue in it if he found it advantageous without
4933 being compelled to do so by any authority or compulsion.

Trial Examiner Norwood: Wouldn't all competitors of the person who started a plan like that have to understand all the particulars concerning it and all the factors entering into figuring the prices, and so on?

The Witness: Each competitor would decide for himself whether he should adopt the basing-point method or not.

Trial Examiner Norwood: Could they adduce all those facts from getting a few prices in the field?

The Witness: Well, it would be necessary for the different competitors to have a considerable degree of information about what their competitors were offering as to prices and the qualities and other information on which they would base their pricing policies. My point is that that is the essential thing rather than compulsion or authority to lead them to adopt this principle, and that with that essential condition each competitor would decide for himself whether it was advantageous to him to adopt such a pricing policy.

By Mr. Moore:

Q. Under the conditions stated in hypothetical question A, in your opinion as an economist, is each conduit manufacturing company selling in a single market or in several markets?

A. Each one is selling in several markets. If you will recall my definition of a market given this morning as the place where the forces that determine prices and lead
4934 to exchange come together, then the various places in which a conduit manufacturer sells his product are

separate markets. In each one there are local conditions of demand, depending upon building conditions and others, which give a particular pattern to the demand in that particular place. In each of those places there is also a particular condition of supply and, therefore, we have in each of these many places the conditions that make it a market.

Q. Under the conditions stated in hypothetical question A, in your opinion as an economist, what advantages, if any, accrue to a conduit manufacturing company by seeking to sell its product in numerous markets?

A. In the first place, probably no conduit manufacturer could keep going if its sales were confined to just one market. There are plants presumably of such capacity to be more than sufficient to meet any local demand, and they were doubtless built in the first place with the idea of selling goods in a very considerable number of markets, so for that reason there would be inducement to sell in many different markets. Also the demand for conduit is a variable thing. It changes from time to time in each market and over the country as a whole, and the changes of demand in the different markets are more or less independent of each other, so that it is possible that the demand will be increasing in one market while decreasing in another, and vice versa.

4935 Now, if a manufacturer is going to keep a fairly steady rate of production he will want to be in position to meet the loss of demand in one market by increasing his sales in some other market, and also he will want to be prepared to take advantage of any increase in demand in any market to increase the volume of his production and sales; and he can't do that if he does not have already some connections, contacts, in these different markets. Even though for the time being the sales might be small in a particular market, he still has his sales force, his selling organization, his information service, and is therefore prepared to act quickly as soon as it appears advantageous to him to seek to increase his sales.

The manufacturer might also see actual advantage in the increased volume which would come if he spread his sales out over a larger number of markets. By increasing volume he is able to distribute his overhead cost over a larger number of units and so do a more profitable business up to the limit of his plant capacity, and perhaps even later enlarge his plant with advantage.

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Mr. MacIntyre: Now, I move to strike the portions of that answer which deal in speculations and conclusions as to what these rigid steel conduit manufacturers in the industry, with which we are here concerned, might do and could do under the circumstances which are, of
4936 course, non-existent in the industry. They have no application to the issues.

Trial Examiner Norwood: I shall defer the ruling on that and ask the counsel to point it out to me tomorrow morning, the lines that he wishes stricken. I shall have to study it, or you may quote the language now if you remember it.

Mr. MacIntyre: Well, the language where he said a manufacturer might do thus and so about shipping into particular markets or adopting particular practices, and where he testified that a manufacturer could do. He was referring there to conduit manufacturers. There has been no foundation laid to show that he knows what they could do or what they might do, and yet throughout the last answer he testified and speculated as to what they might do or what they could do.

Trial Examiner Norwood: Motion denied for the time being. You may renew it after you study the record.

Go ahead.

By Mr. Moore:

Q. In order to be in a position to compete for a share of the business when demand springs up in a particular market, under the conditions assumed in hypothetical question A, what marketing arrangements would appear to you, as an economist, to be necessary for a manufacturing company?

Mr. MacIntyre: Now, I object to that because that calls for the same kind of an answer as he gave before, one of speculation as to rigid steel conduit.

4937 Trial Examiner Norwood: He is an expert who is giving us economic opinion.

Now, read that question, please.

(Question read.)

Trial Examiner Norwood: Objection overruled.

A. In my opinion, it would be necessary for the manufacturer to have his salesmen in that location, to have them in contact with the prospective buyers of different classes; to have them giving him information about the

local conditions, to have them establishing relations of acquaintance with prospective buyers.

By Mr. Moore:

Q. What do you mean by "establishing relations with prospective buyers"?

A. I mean that the salesman gets acquainted with these prospective buyers. He mets them in various ways; he—perhaps both socially as well as in a business way. He gives them his sales talks, his arguments, in favor of purchasing his own particular commodity, and they know each other, so that he can start immediately to come to definite discussion when the opportunity arises.

Q. In your opinion as an economist, is it a normal competitive procedure for a conduit manufacturing company to seek to maintain regular trade relationships with distributors and contractors in numerous markets?

4938 A. I think it is.

Q. How would those relations with distributors and contractors normally be established?

A. Through the use of salesmen, advertising, and possibly matter sent to them by mail, principally by means of salesmen.

Q. What would be the task that you would expect these salesmen would perform?

Mr. MacIntyre: I object. That goes to speculation. It isn't a part of economic theory, just as the last half dozen questions and answers have gone. We are dealing here with—supposedly with an effort to get results in expressions of an economic theory, and yet the questions are being propounded as if to a member of the jury in passing on facts.

Trial Examiner Norwood: Objection overruled.

Go ahead.

The Witness: Could I hear that question again, please?

(Last question read.)

Trial Examiner Norwood: That is, under competitive conditions, are you—

Mr. Moore: I am assuming competitive conditions, yes.

Mr. MacIntyre: Well, has that been true in all of the other questions that have been asked, Mr. Moore?

Mr. Moore: Why, certainly.

4939 Off the record.

(Discussion off the record.)

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Trial Examiner Norwood: Go ahead. Go ahead.

The Witness: I think I have in considerable measure already answered that question in my answers to previous questions, but I would think the task of these salesmen would be to make contacts, become acquainted with prospective buyers, to gather information as to the demand for conduit in this locality, as to prices and conditions of quality or service being offered by competitors, and to transmit that information to the manufacturer.

By Mr. Moore:

Q. What would you expect, as an economist, that these salesmen would be given—strike it out, please.

Would you expect, as an economist, that these salesmen would be given instructions or turned loose to follow their own individual inclinations?

Mr. MacIntyre: Again that is objected to as calling for a statement of the psychology of the manufacturer who hires the salesmen.

Trial Examiner Norwood: Overruled. Go ahead.

A. I should think the manufacturer would give these salesmen very complete instructions and not leave them to act according to their own individual judgment.

By Mr. Moore:

4940 Q. What sort of instructions would be given, do you think?

Mr. MacIntyre: The same objection.

Trial Examiner Norwood: Overruled.

A. They would be instructed especially as to the prices that they might offer, and the other conditions of service, and so on, which the manufacturer wanted them to offer to prospective buyers.

By Mr. Moore:

Q. What would you, as an economist, expect to happen if a manufacturer of conduit sat in his office and waited for customers to come to him instead of sending out salesmen?

A. I should think we would have—he would make very few sales. After all, if he were simply waiting for customers to come to him while his competitors presumably were employing salesmen and making contact with buyers in the various markets, I should think it would not be very likely that many buyers would take the trouble to come to him. He might make some sales in a strictly local

market which other competitors were not entering, but beyond that I should think his sales would be very definitely reduced.

Q. Why shouldn't the seller rely upon the use of the mails, the telephone, the telegraph?

A. The contact with prospective buyers by those means would be so much less effective than the presence of salesmen that his sales program would be—probably be very unsuccessful; his competitors again having their salesmen right there in contact with the buyers, there would be pressure to beat him out. Also it would be far more difficult to put before prospective buyers all of the conditions in the most effective, convincing way by mail, telephone, or telegraph.

4941

Trial Examiner Norwood: Now, I don't see that this is relevant and material here. It seems like we are going—strike that.

Off the record here.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

By Mr. Moore:

Q. Well, then, may I ask this question: Is it your conclusion, as an economist, that under the conditions assumed in hypothetical question A, the negotiations for the sale of rigid conduit must ordinarily take place in the field, or can they ordinarily be handled directly by someone at the manufacturing plant?

Mr. MacIntyre: I object to that. It calls for incompetent, speculative statements, and irrelevant and immaterial matter.

Trial Examiner Norwood: Overruled. Let him tell us that.

A. I think that the negotiations would normally have to be carried out in the field rather than at the offices of the manufacturers.

4942

By Mr. Moore:

Q. As an economist, would you expect the manufacturing company, under the conditions assumed in hypothetical question A, to leave to individual salesmen the decision as to the price to be quoted in each individual negotiation?

Mr. MacIntyre: That is objected to as duplicating the record.

Trial Examiner Norwood: Well, he did not specify here

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pricing particularly. I will let him answer that. The counsel's point is well taken.

I will overrule the objection.

A. No, I would not expect the manufacturer to leave to the discretion of each of his salesmen the determination of the prices to be offered.

By Mr. Moore:

Q. What, in your opinion, would be the result of having the salesmen bargain on price on each prospective order?

Mr. MacIntyre: Now, I object to that. That is—

Trial Examiner Norwood: Sustained.

We will have a five minutes' recess.

(There was a short recess taken.)

4943 Trial Examiner Norwood: Proceed.

Mr. Moore: Just a moment, please, Mr. Examiner.

By Mr. Moore:

Q. Professor, under the conditions assumed in hypothetical question A, in your opinion as an economist would it be practicable for the manufacturing company to instruct its salesmen to quote the same f. o. b. price the manufacturing plant; that is, the same price f. o. b. the manufacturing plant?

A. No, sir; I do not think it would.

Q. Why do you say that? Why not?

A. Well, every prospective buyer would, of course, immediately add to that price the charge for freight to his particular point of delivery and would not buy of this manufacturer in any case where he could get a lower delivered price from any other competitor.

Furthermore, this manufacturer would be very definitely limited in going out to expand his volume of sales in competition with other competitors. If he, for instance, wished to work into a particular market and offer a price to match the prevailing price there, or even to offer a lower price, he would not be able to do that, unless the price were already equal to the sum of his f. o. b. price plus freight without lowering his f. o. b. price. And so in order to get the same customers in this one market, he would have

to lower his price, and presumably his income from

4944 all of his other customers.

On the other side of the picture, his competitors,

not following this rule of uniform f. o. b. price, would be able to invade his territory and match his prices, or underbid them, and he would have no way of combatting that invasion of competitors except by lowering the price in that market, which would mean lowering his uniform f. o. b. price, and so reducing the price to all of his customers.

The manufacturer also would be unable to take advantage of markets which he might enter if he offered a price that would not cover all costs, including overhead, or in any way seek to expand his sales by meeting or under cutting prices of competitors, because in those cases he would have to take the consequences of reducing his f. o. b. price and, therefore, his income from all his customers.

Q. What would be the effect of that upon the usefulness of his sales organization?

Mr. MacIntyre: I object. It is immaterial as to what effect one practice as against another would have upon a sales organization. We are here concerned with what effect one practice or another has upon—or at least this practice that is challenged under the complaint has upon competition.

Trial Examiner Norwood: Objection overruled.

Mr. MacIntyre: That is, price competition.

A. Well, I should say that the practice of charging
4945 uniform f. o. b. prices would go a long ways towards nullifying the usefulness of the sales force. His salesmen would no longer be able to offer inducements to prospective buyers by offering price concession. About all they could do would be to extol the superior qualities of their particular product, but they could not enter into negotiations with buyers and make the price concession that is necessary to win sales, and the result would be a restriction of a normal competitive device.

By Mr. Moore:

Q. Is there any method of quoting prices, in your opinion as an economist, which particularly fits the conditions assumed in hypothetical question A if the prices must be adjusted to meet the competitive conditions in each local market?

Mr. MacIntyre: Pardon me.

May we have that question read?

Trial Examiner Norwood: Read it.

(Question read.)

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Mr. MacIntyre: Now, I do not know what method that question goes to. Certainly it does not go to the method that is involved in the case.

Mr. Moore: Well, we will find out when we let the witness answer the question.

Trial Examiner Norwood: Yes. I think we will let him answer.

Objection overruled.

4946 A. Well, in my opinion, the basing-point method of pricing and selling is one that fits very well the conditions that have been stated.

Trial Examiner Norwood: He asked you if there is any other practical method, didn't he?

Mr. Moore: No. I asked if there is any method.

Mr. MacIntyre: It was my understanding of the question, "Is there any other."

Trial Examiner Norwood: Well, is there any other method?

The Witness: There are various other methods, but none that I think of would seem to fit so naturally the conditions named in this question.

By Mr. Moore:

Q. Under the conditions assumed in hypothetical question A, if the use of the basing-point method yields varying net amounts per unit of product to the conduit seller on sales made in different areas, is or is not that result necessarily disadvantageous to the seller's customers?

Mr. MacIntyre: I object. There is no foundation laid to show that this witness is competent to answer that with respect to any of the customers in the rigid steel conduit industry.

Trial Examiner Norwood: He is asking the Doctor to discuss that from the standpoint of an economist.

4947 Objection overruled.

Mr. Moore: Do you want the question read?

The Witness: If you please.

Trial Examiner Norwood: Give us the economic aspects of the situation.

Mr. Moore: Will you read the question, please?

(Question read.)

A. Well, as an economist, I would think it was not necessarily disadvantageous to the customers. What the customers are particularly interested in, I should think,

is that they each receives a price not higher than the price charged to others in that same market, and that is particularly pertinent if those others are dealers or contractors who are competitors of theirs. So long as that uniformity is met, these buyers would not be particularly concerned about the mill nets received by the manufacturers, and particularly if these mill nets are the result of sales to other localities in which the dealers are not in competition with the others, they would have still less interest in the mill nets obtained by the manufacturer.

Now, I can conceive that buyers might have some interest in having prices which are not exorbitant in relation to the cost of production of the product, but it would seem that this basing-point method, which in my opinion contributes toward competitive selling, would therefore
4948 be an element to contribute toward keeping prices in proper relation to cost of production, since after all competition is the most powerful force we have to prevent prices going above the cost of production, and the basing-point method of pricing seems to me to be a natural competitive device, and therefore contributes to the normal working of competition.

By Mr. Moore:

Q. Under the conditions assumed in hypothetical question A, would you as an economist expect to find a substantial degree of identity or uniformity in price quotations submitted by conduit sellers in bids for public openings?

A. Yes, sir; I would expect uniformity or identity ordinarily. Each manufacturer would, I should think, offer in his bids to the Government the same price that he is offering to the customers in general in that market. He would expect that his competitors would offer such prices. If he should choose to offer to the public opening a higher price than that, he would hardly expect to make any sale. If he offered a lower price, on the other hand, he would expect that his competitors would very soon learn about that. Even if he got this particular bid, he would have reason to think that his competitors would thereafter lower their price to meet his lower price, not only for the public offering but for their commercial customers as well, and they might even go still lower and precipitate a price war.

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4949 In my opinion, the manufacturer would therefore not offer a price lower than the prevailing price in that market, unless by a coincidence this happened to be the time when he was prepared to initiate a price reduction and ready to accept the risk of price war. Normally, therefore. I would think he would neither offer a higher nor a lower price than the price there prevailing.

Q. I think perhaps you have indicated your answer, but, I would like to have a specific answer to a specific question. The first is this:

Would such identity or uniformity in prices indicate to you as an economist an absence of competition among conduit sellers?

A. No, it would not indicate that.

Q. Would you as an economist infer from such identity or uniformity in public bidding the existence of an agreement or understanding or other form of collusive activity among conduit sellers in making prices?

A. No, I would not. It seems to me that the separate manufacturers would normally be inclined to make a bid at the prevailing price and that each one would arrive at that decision independently in his own interest, and it would not be necessary for him to consult with other competitors.

Q. In your conception of competition as an economist, would competition exist where one seller of a stand-
4950 ard commodity merely meets—that is, makes his price the same as the price of a like seller in the same market, or is it essential, in your opinion, in order for competition to exist that one seller make his price lower than the other seller?

A. In my opinion, there is a state of competition when one seller simply meets the price prevailing in the market, or the price offered by other sellers, and competition does not require that each competitor be offering a lower price than the others—obviously that would be an impossibility. He could not have every competitor offering a price lower than every other competitor.

It reminds me of the old railroad story, the order from the general manager that two trains approaching simultaneously a crossing, both stop, and neither proceed until the other has crossed.

Q. Let us assume that the evidence shows that a very substantial number of the manufacturers of conduit sub-

mit to a contractor bids for his requirement of conduit for a proposed building, which are at the same delivered price for the same quantity and kind and specifications of conduit for delivery at the same specified time, would you as an economist infer from that evidence that the sameness in price was due to an agreement or understanding or other collusive activity among the manufacturers?

A. I am sorry, but I do not think I caught the
4951 first part of the question.

Trial Examiner Norwood: I think you may show that this thing could possibly come about without an agreement, but you ask him his conclusion on that, and I do not think—

Mr. Moore: I am asking him whether he, as an economist, would infer a certain thing from a certain state of facts. Now, he is called here, as I understand it, in an advisory capacity.

Trial Examiner Norwood: Please rise.

Mr. Moore: I am sorry.

Mr. MacIntyre: But the objection to it is that he is not advising the Commission in giving an answer to that question as to what the economic theory is which applies to the situation in question, but he is stating a conclusion of what the verdict ought to be by the Commission.

Mr. Moore: Not at all. He is simply called here to answer as an economist, having studied the subject, as the record shows, for many years, and with that experience and with that study he is asked to say whether he would infer something from a particular state of facts. I submit that that is a proper question.

Mr. MacIntyre: Well, as to whether he or somebody else would infer—

Trial Examiner Norwood: Read the question.

(Question read.)

4952 Mr. MacIntyre: That is again, if Your Honor please, a matter of attempting to get into the record a statement—

Trial Examiner Norwood: I think that that question is badly put. You can show whether such a condition could possibly arise by the natural operation of economic forces.

I am going to sustain the objection to the form of the question.

Mr. Moore: Well, may I just say another word?

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It seems to me the question is in substance not very far different from calling a doctor as a witness, and we state to him the symptoms and ask him whether in his opinion that indicated a certain disease.

Trial Examiner Norwood: You can't ask for the verdict.

Objection sustained.

Go ahead.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

By Mr. Moore:

Q. Given that statement of facts, I ask whether that result would naturally flow from the working of economic forces.

A. I think it would.

Trial Examiner Norwood: How?

4953 The Witness: Well, I have largely explained that already by explaining why a seller in a market has the opportunity to choose whether he will offer the prevailing price, a higher price, or a lower price, and—

Trial Examiner Norwood: By the other person meeting—

The Witness: —and other competitors have the same opportunity, and it is quite normal and natural that each competitor should decide in his own interest, without collusion, that that was not to his interest. It very seldom to his interest to offer a higher price, because, unless the market condition is such as to lead his competitors to follow, he would not sell anything at all; and if he offered a lower price, he must decide whether that will be to his advantage or not, and under given conditions, whatever they are in the market, it is perfectly natural that all competitors should arrive at the same decision.

Trial Examiner Norwood: Now, you are assuming that one man knows what the other man is going to bid, aren't you?

The Witness: No sir; I am not. As a result of experience, he knows that if he offers a higher price it is very likely they want to follow him, unless he knows the condition is ripe for the price; and also he is likely to know from experience that if he offers a lower price they all follow him immediately, and he must therefore take into—

4954 Trial Examiner Norwood: Yes, but how does he arrive at the price himself?

The Witness: Well, the price is already there.

Trial Examiner Norwood: The prevailing market price, you mean?

The Witness: Yes. The price is already there. There is a prevailing price in the market which is in effect now and which has been in effect for some time past, long or short, and his decision is not as to what the new price is—I should say primarily; his first decision is, "Shall I stay at the same price as that prevailing in the market?" If he should decide "No" to that, then he would have to decide whether to offer a higher or a lower price, and he would examine the probable consequences of offering a higher or a lower price than the prevailing price.

The whole point to my answer to this particular question, I think, is that each competitor faces that situation and makes his own decision. He can make his own decision independently. An agreement or consultation or collusion with other competitors is not required.

Trial Examiner Norwood: In accordance with the working of economic laws, very often, then, a half dozen or more bidders would come to the same conclusion?

The Witness: Yes. It is a competitive result.

Mr. MacIntyre: I move to strike this long dis-
4955 coursive answer, on the ground that it is not a statement of economic theory and therefore advisory to the Commission in that respect, but it is a speculation of what these Respondents would do under particular circumstances.

Trial Examiner Norwood: The motion is denied.

He has answered my question.

Go ahead.

By Mr. Moore:

Q. May I ask this question:

Would you as an economist think it proper to infer that such evidence—that is, the evidence which we have assumed—showed a lack of competition among such manufacturers in respect of their bids?

Mr. MacIntyre: I object. It is merely asking this witness, if the Commission should in this case find these Respondents guilty as charged, would it be acting properly.

Trial Examiner Norwood: Read the question.

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Mr. Moore: I think it is a perfectly proper question.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: You are not asking him if he infers something or other; you are asking him if he thinks it is proper to infer.

I sustain the objection.

4956 Mr. Moore: Perhaps I should have made my statements before, Mr. Examiner, but certainly I misconceive the purpose of calling expert witnesses, or have some misunderstanding about it, because he is not called here to make a decision for the Commission; he is called here as an expert, understanding economics, to state what in his view the proper inference would be if we have bids all the same submitted in response to an invitation.

Trial Examiner Norwood: That is what the Commission is asked to do. You are asking him for the verdict.

Mr. Moore: No. We are urging, if you please, that the verdict should be something, and we are urging it because a man of years of experience in the subject expresses that opinion.

Trial Examiner Norwood: That is not asking him to pass directly on the evidence. You can ask him to pass on these assumptions, or from the evidence.

By Mr. Moore:

Q. Are varying factory net proceeds per unit sold inconsistent with the principle that prices of different sellers tend to be uniform under competitive conditions in any market?

A. No, they are not.

Q. In your opinion as an economist, are varying factory net proceeds per unit sold indicative of a failure of the seller to follow his self-interest in a normal competitive manner?

4957 A. No, they are not.

Q. Assume that each conduit seller generally refrains from quoting f. o. b. its place of production or shipment prices—that is, prices f. o. b. the place of production or shipment—that are independent of, and unrelated to, delivered price quotations determined from a basing-point formula, would the fact that he so refrained indicate to you as an economist a lack of competition?

A. No, sir; it would not.

Q. From your observation of business behavior, if a conduit seller generally refrained from quoting f. o. b. its place of production or shipment prices that were independent of, and unrelated to, delivered price quotations determined from a basing-point formula, to what would you as an economist attribute that refusal?

Mr. MacIntyre: Well, I object to that. It is asking the witness to speculate as to what someone in the Rigid Steel Conduit Industry has had as a reason for refraining from quoting f. o. b. mill prices.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: Aside from a basing-point system.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: It is a matter of psychology.

Trial Examiner Norwood: Read the question.

(Question read.)

4958 Trial Examiner Norwood: Read it again.

(Question again read.)

Trial Examiner Norwood: Objection overruled. Answer the question.

The Witness: Shall I answer it now?

Trial Examiner Norwood: Yes.

Mr. Moore: Answer.

A. In my opinion, if the manufacturer quoted f. o. b. prices which were unrelated to delivered prices resulting from a basing-point system, he might quote uniform f. o. b. mill prices. I already expressed my opinion as to why that would be disadvantageous.

Now, if he did not quote an f. o. b.—uniform f. o. b. price, I can't conceive of any other pattern of f. o. b. prices unrelated to and independent of delivered prices, except arbitrary with an unrelated series of prices, and I think any manufacturer who set out to quote prices—f. o. b. prices of that sort would be in difficulty with his customers at once. They would compare these different quotations. Some would feel that they are not being treated as well as others, since the price would neither be uniform f. o. b. nor would they be related to delivered prices, and he would lose customers' good will and get his business into chaos.

After all, any large manufacturing business must have some sort of patterns of price making, and since I can

4959 conceive of only two patterns, one of which is ruled out by the question itself, and the other which I have already expressed—in which I have already said in my

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opinion would be disadvantageous, I cannot see that it would be advantageous to a manufacturer to quote such prices.

By Mr. Moore:

Q. Do you find in economics, in your study and teaching the term "freight absorption" used?

A. Yes, sir; I do.

Q. What does it mean?

A. It means, as I understand it, that a seller goes into a market and meets the price which he there finds, or possibly even bids below that price, even though as a result the mill net which he receives may be less than the mill net he is receiving on sales in other markets.

Q. Now, if a conduit seller generally were to quote f. o. b. its place of production or shipment prices that were independent of and unrelated to, delivered price quotations determined from a basing-point formula, would that, in your opinion, result in the giving up of the practice of freight absorption by the conduit seller?

Mr. MacIntyre: I object. It calls for incompetent testimony in the form of speculation, statements of psychology. It further is incompetent and irrelevant in that there is no charge in the complaint to which any answer 4960 that can be given to the question would be a defense.

Trial Examiner Norwood: Objection overruled.

Tell us whether he can absorb freight and still make an f. o. b. price unrelated to a delivered price.

The Witness: I do not think he could continue to absorb freight, because, as I have already testified, the only conceivable pattern of f. o. b. prices not related to delivered prices is uniform f. o. b. price. That, of course, is a contradiction in terms of the possibility of freight absorption.

By Mr. Moore:

Q. If a conduit seller were to quote f. o. b. its place of production or shipment prices that were independent of, and unrelated to, a delivered price quotation determined from a basing-point formula, as an economist would you expect the f. o. b. price quotation to be uniform or non-uniform?

A. I would expect it to be uniform.

Mr. MacIntyre: May I have that complete question read?

Trial Examiner Norwood: Read it.
(Question read.)
Mr. MacIntyre: That is all right. Thank you.
Trial Examiner Norwood: What did he say?

By Mr. Moore:

4961 Q. In your opinion as an economist, under conditions assumed in hypothetical question A, if a proposal were made that each conduit seller generally should quote f. o. b. its place of production or shipment prices that were independent of, and unrelated to, a delivered price quotation determined from a basing-point formula, what interpretation of the proposal is essential in order to give it practical meaning?

A. I should think that proposal would only be interpreted as a proposal for a uniform f. o. b. mill price.

Q. As an economist, under the conditions assumed in hypothetical question A, would you expect that a conduit seller generally acting intelligently in his own self-interest would voluntarily quote f. o. b. its place of production or shipment prices that were uniform?

Mr. MacIntyre: Well, I object to that. The facts are not before the witness to serve as a foundation for the answering of the question. It would therefore be a matter of speculation and an incompetent answer, if he attempted to give any.

Trial Examiner Norwood: Read it.
(Question read.)

Trial Examiner Norwood: Objection sustained.

4962 Trial Examiner Norwood: I adhere to that ruling. Go ahead.

By Mr. Moore:

Q. If each conduit manufacturing company were forbidden by an order of a Government commission to quote prices which were related to the delivered prices in the various markets in which each conduit manufacturer hoped to sell, in your opinion as an economist would that result in fostering or restricting competition?

Mr. MacIntyre: I object to that.
Trial Examiner Norwood: Sustained.
You can show what economic results there would be. You can show the condition that might have on the trade of these people, the factual matter there, the economic considerations, but you are asking him for a legal conclusion.

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Mr. Moore: Oh, no, I am not.

Trial Examiner Norwood: Read it.

Mr. Moore: There is nothing in the way of a legal conclusion. I am asking for an economic conclusion.

Trial Examiner Norwood: Read it.

(Question read.)

Mr. MacIntyre: That is irrelevant and incompetent, anyway.

Trial Examiner Norwood: Well, I beg counsel's
4963 pardon. I thought it involved a legal conclusion there.

Mr. Moore: No, sir.

Trial Examiner Norwood: He may answer.

I will reverse the ruling on that. Objection overruled.

A. I think that such a ruling would tend to limit competition.

Trial Examiner Norwood: How?

The Witness: Well, I have already explained, it seems to me, that the basing-point method of pricing and selling goods is a natural development and one that best permits the free operation of the economic forces of competition.

Now, a Government order which forbade competitors to use this method, and which, so far as I can see, might force them over to a uniform f.o.b. mill price, would, I think, simply be depriving them of one of the normal devices in competitive selling.

Trial Examiner Norwood: He would confine his business to near his mill, contiguous to his mill, would he?

The Witness: That is not quite what I had in mind, Your Honor.

As I have already stated, it would do two principal things —three principal things: It would prevent any one competitor going out and invading the territory of another competitor. That is certainly reduction of competition.
4964 It would prevent this competitor resisting another competitor coming in and invading his territory. That is also limiting his competitive power, and it would tend to weaken the motives which normally lead manufacturers to make their markets as wide as possible, because the way to make your market wide is to go in competition with the people already in the new market you are entering, and you do it by meeting or underbidding their prices.

And, as I have already testified, in many cases he makes it so costly to reduce the prices that he collects from all of his

trade that his ability to make that competitive widening of his market would be reduced.

On all these grounds it seems to me that any public order which forbade the using of the basing-point system would directly impair the full operation of the economic forces of competition.

Trial Examiner Norwood: You are assuming under conditions where he would not absorb the freight.

The Witness: That is right. He could not absorb the freight.

Trial Examiner Norwood: You are assuming if he departed from the basing-point system he would have to go on a uniform mill basis, are you?

The Witness: As I testified, I cannot think of any other pattern.

4965 Trial Examiner Norwood: Do you think that would be a violation of the Robinson-Patman Act for him to absorb freight through reducing his mill net on distant shipments?

The Witness: I would rather, Your Honor, not answer a question of legal interpretation of that sort. I have been trying to confine my answers to the economic considerations, of course, and I do not think my testimony would be so valuable on legal questions.

Trial Examiner Norwood: Well, you do not have to answer that, but assuming—

The Witness: No, Your Honor. My reason for testifying that I thought the uniform f.o.b. basis would interfere with freight absorption, just by definition "freight absorption" means that you are taking a lower mill net on some of your business than other, and yet the hypothesis is uniform f.o.b. mill.

Mr. MacIntyre: If Your Honor please, I now move to strike from the record all of the answers and the explanation of the answers which have been given by the witness to the question which I objected in that they attempt to state whether or not that it would be proper for the Federal Trade Commission in this proceeding to issue a cease and desist order against the use of the basing-point system. That is all that that answer goes to, and in setting up the answer it poses speculation as to what would happen

4966 if the Commission did or should issue an order of cease and desist against the basing-point system in this industry.

Trial Examiner Norwood: Motion denied.

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By Mr. Moore:

Q. Professor, I am not sure whether you answered—

Mr. Moore: Will you excuse us just a moment?

Trial Examiner Norwood: Yes.

(Pause.)

By Mr. Moore:

Q. I started to say I was not sure whether you had indicated in your answer what in your opinion would be the effect of such an order upon a manufacturer's sales method and organization and his contacts.

Mr. MacIntyre: I object to that, because it is irrelevant and immaterial. If these Respondents have engaged in a combination in restraint of trade, it is irrelevant and immaterial as to what the effect of an order of the Commission upon them would be in directing them to cease and desist the combination in restraint of trade.

Trial Examiner Norwood: Well, the complaint charges "capacity and tendency to restrain trade," doesn't it?

Mr. MacIntyre: The method of using it. Now, he is asking him what would be the effect upon these Respondents if the Commission asked them to cease and desist from 4967 restraining trade.

Trial Examiner Norwood: That will throw some light on the methods here.

Overruled.

Answer the question.

A. In my opinion, such an order would seem to throw them over to a uniform f.o.b. mill base, and, as I think I have already testified in answer to your previous questions, that would reduce the usefulness of their sales force, would limit their competitive attack upon other markets, and restrict their competitive selling generally.

By Mr. Moore:

Q. May I ask this question:

Professor, would such a prohibition, that is, the prohibition of such an order, result in an economical distribution of business among various conduit sellers?

Mr. MacIntyre: I object to that on the same ground that I objected to the previous question, and on the further ground that it is highly speculative, and it does not call for an expression of economic theory or advice from an economist.

Trial Examiner Norwood: Objection overruled.
The Witness: May I hear that question again?
Trial Examiner Norwood: Read it.
(Question read.)

4968 A. I think it would not, principally because of its restricting effect upon free competition. The force which leads generally normally to economical distribution of industry is competition. Each manufacturer is seeking his own interest and enters into competition in whatever markets he thinks are advantageous to him, and the result of the play of the forces of economic competition among different competitors tends naturally to result in the most economical distribution of industry. Just to the extent that such an order led to the abandonment of the basing point pricing method and to the substitution of a uniform f.o.b. mill price, which would restrict competition, so I think also it would inevitably prevent the most economical distribution of the industry.

By Mr. Moore:

Q. Well, what if any, would be the effect of such an order upon the industry with reference to the adjustment to changes in demand?

Mr. MacIntyre: Objected to for the same reason that I objected to the last question.

Trial Examiner Norwood: Overruled.

A. As I have already testified, the demand in this industry is frequently changing, and as demand changes in a particular place, a seller finds it to its interest to enter that place, and, by meeting the prices, or possibly undercutting, increases sales, which it would find it difficult to do

4969 under the f.o.b.—uniform f.o.b. mill price.

Furthermore, under the basing-point method of pricing, if there comes a sudden increase in demand in a certain locality, the buyers in that locality are able to buy from outside that particular territory. Sellers in other territories come in there and supply their needs. If a uniform f.o.b. mill price were required, these others could not come in and absorb freight without lowering their prices to all their customers. The result would be that the mill in whose territory this particular place was would be placed in a monopoly position, and it could charge specially high prices for the product in this place where there was a temporary increase of demand, and might even find it possible to take advantage of the situation by raising its f.o.b. price.

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Trial Examiner Norwood: Now, in this answer you are assuming that in the absence of the basing-point system every mill would have to have a uniform f.o.b. price; is that right?

The Witness: I can't think of any other method of pricing.

Trial Examiner Norwood: Well, that is the assumption in your answer?

The Witness: That would be practicable, yes.

By Mr. Moore:

Q. Well, I take it, Professor, when you say that you do not mean to testify that instanter that would be the
4970 effect; that that is the result that would be worked out from having a uniform f.o.b. mill price?

A. Oh, yes. I certainly meant to imply that changes like this would take some time to work themselves out, directing my answer to the ultimate changed condition which would come from these different circumstances.

Q. Now, considering the situation from the point of view of manufacturing operations, would such an order result in greater or less regularity in such operations in the various conduit manufacturing plants?

Mr. MacIntyre: That is objected to on the same ground that I have objected to the immediately preceding question.

Trial Examiner Norwood: Overruled.

A. It would, in my opinion, result in less regularity. Under the basing-point method a manufacturer can promote the regularity of his production and selling by going into a market where the demand is temporarily increased to offset loss of sales in other markets where there was a temporary decrease in the demand, and he can do that even though he has to absorb some freight. The only reason why he can do it now under the basing-point system is that he already has in these various places a sales force and his information service which makes it possible for him to step in at once when the opportunity presents itself.

4971 As I have already testified, denying to the manufacturer the right to quote prices, delivered prices to his customers, and forcing him to a uniform f.o.b. mill price would mean that in many of these places it would no longer be worth while to maintain a sales force and his information service as usual, and so again he would not be able to regularize his production by meeting low demands

in some markets to offset the high demands in other markets.

Mr. MacIntyre: I move to strike the answer, on the ground that it is posing a speculative situation as to what might occur if an order were issued in this case against the Respondents.

Trial Examiner Norwood: Motion denied.

Five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. Moore:

Q. One more question on this line, on the same supposition:

Assume such an order. Would it result in generally lower costs of conduit to buyers?

Mr. MacIntyre: I object to that. Most certainly that can't be answered on any economic theory, as to whether that the costs would be lowered, and it is irrelevant and immaterial.

Mr. Moore: I said costs to buyers.

4972 Trial Examiner Norwood: Assuming, of course, no change in the costs of manufacture.

Mr. Moore: Right. I said costs to buyers by reason of that order.

Trial Examiner Norwood: Yes.

Objection overruled.

A. I think it would have the effect of increasing costs to buyers.

Trial Examiner Norwood: Why?

The Witness: For the reason that it curbs competition. As I have already testified at some length, competition is the principal force that keeps costs to buyers down, and any device which interferes with free operation of competition in industry has a tendency to let the prices go up higher than they otherwise would.

By Mr. Moore:

Q. Then, the answer to my question, as I understand it, is "no," for the reason which you stated?

A. Yes, sir.

Trial Examiner Norwood: You think that the territory would be circumscribed, do you, or the territory which would be covered by each mill economically would be reduced?

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The Witness: Would be reduced; yes, sir.

Trial Examiner Norwood: And you think on account of the reduced volume of business that they would
4973 do, they would have to charge higher prices to the consumer; is that the idea?

The Witness: Not necessarily have to charge prices, but will be able to charge higher prices because of the absence of pressure of the competitors.

Trial Examiner Norwood: All right.

By Mr. Moore:

Q. Now, Professor, I am not sure whether you have indicated the answer to this question or not, but I would like to ask it and have a specific answer.

Would a pricing method which permitted freight absorption be unrelated to delivered prices?

Trial Examiner Norwood: You mean could it?

Mr. MacIntyre: Let us have the question read.

Mr. Moore: Would it naturally.

The Witness: May I have the question, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. No, it would not be unrelated; it would definitely be related to delivered prices, because freight absorption has to be calculated and undertaken with respect to the delivered prices.

By Mr. Moore:

Q. Would a pricing method which permitted
4974 freight absorption normally have substantially the same result as yielded by the basing-point method?

A. I think it would, for reasons which I have just stated.

Q. In order to have a true market, is it necessary that prices should change with any specifiable frequency, such as a minute, days, or weeks?

A. No, sir; it is not.

Q. What is the explanation of the greater frequency of fluctuation in prices on the Grain Exchange, for example, as compared with the fluctuation of prices on the markets for conduit?

Mr. MacIntyre: May we have that question read, the first part of it?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. MacIntyre: That is objected to as calling for irrelevant and immaterial matter.

Trial Examiner Norwood: Overruled.

A. I think the principal explanation is that the dealings on the Grain Exchange are in large measure speculative. They are dealing in futures. They are buying and selling on a speculative basis. There is almost constant buying, offering, and exchange going on, and such a market is able to respond very delicately to the slightest changes in demand and supply, the principal reason being the pres-
4975 ence of a large volume of speculative dealing.

By Mr. Moore:

Q. Under the conditions assumed in hypothetical question A, as an economist, would you expect the price of conduit to fluctuate at frequent intervals or to be stable over a considerable period of time?

A. I would expect it generally to be stable over considerable periods of time.

Q. Why do you say that? Why would you have that expectation?

A. Well, there are various conditions that have been stated which would make that natural result.

When a seller contemplates an increase of price he knows that his increase will not be effected unless practically all his competitors follow suit. Knowing that, he is more reluctant to make a price increase than he might otherwise be an industry under different conditions.

On the other hand, if he contemplates a reduction in price, he knows very well that his competitors will all equal that, in view of the fact that the demand for conduit does not vary sensitively with the price, because the use of conduit is in connection with building operations and is generally a comparatively small part of the total cost of the building.

A reduction in price might not have very much
4976 effect in increasing the total volume of sales of the entire industry.

Furthermore, the reduction in price would not normally give any particular benefit to the one seller who initiated that reduction, because all his competitors would also reduce and get just as much advantage as he from the lower price. So he would not expect to get a very much greater share of the total business, and he would not expect the total business to be very much larger than before.

There is a very good chance then that a reduction of price would reduce his profits rather than increase them. That tends to make him more reluctant to reduce prices than might be the case in an industry under different conditions.

Furthermore, certain conditions which are granted to buyers, as stated in the hypothetical question, operate in the same way. When a manufacturer is selling to a particular job covering a considerable period of time, he protects the buyer against price increases. Now, that means that if he does increase his price, and it is followed by the others, and becomes effective, it will be some time before he will get the full advantage of his increase, and there will be less profit to him in making the increase than if conditions were otherwise.

If, on the other hand, we are dealing with other buyers,
not on special jobs, those buyers also are generally
4977 given the privilege after a price increase has been
announced of buying for some time at the former price, which again reduces the benefit to be obtained by the manufacturer from his price increase.

If a price is lowered, these special job contracts give to the buyer the advantage of the lower price, so that when the price is lowered in that case the manufacturer not only gets a lower income per unit on sales from that time on, but sacrifices something on sales already contracted.

I have named, I think, the principal conditions of this industry, as stated in the hypothetical statement, which tend to make the manufacturers reluctant to make changes, and therefore lead me to presume that it is natural that in such an industry as this that price fluctuation would not be so frequent as in industries where the conditions were different.

Trial Examiner Norwood: That would discourage reductions of price more than it would increases, would it?

The Witness: No, sir. I think it would be pretty hard to draw such a comparison. It tends to discourage both, but I do not think it would discourage the decreases more than the increases.

Trial Examiner Norwood: Well, all his contract stuff will come down instantly.

The Witness: Yes, but he has also losses to ex-
4978 pect when he makes his increase; that is, he does not
get the full advantage of it, anyway. He does not get

the full advantage of an increase in price because he has protected special job contractors, and he has also given all the others a chance to stock up below price, so that whatever advantage he might otherwise have if the price were immediately effective would be diminished, and I find it difficult to appraise those two, the checking of increases and the checking of decreases, ot say which is the greater.

By Mr. Moore:

Q. In paragraph 21 of the statement of facts—that is hypothetical question A—it is stated that "during the last eight years there have been as many as fifteen changes in the quotations of conduit prices published by various conduit manufacturers, the periods of time between the dates of such changes varying from less than a month to approximately a year and a half."

Now, assuming that that statement states facts, do such facts indicate to you as an economist an absence of competition?

A. No, sir; they do not.

Q. In a competitive market would you expect the seller of a product such as rigid conduit to be raising and lowering its price quotations each time that an attempt is made to effect a sale?

4979 Mr. MacIntyre: I object to that. It does not call for a statement of economic theory, but rather one going to psychology and speculation.

Trial Examiner Norwood: It goes to the operation of economic law.

Mr. MacIntyre: No, I do not see that it does.

Trial Examiner Norwood: Objection overruled.

Go ahead.

The Witness: Could I hear that question again?

Trial Examiner Norwood: Read it.

(Question read.)

A. No, I would not.

I think in my answer to a previous question I have given the reasons why sellers would tend to be somewhat reluctant to initiate either price increases, which they would not hold, or price decreases, which might not be unprofitable.

I might add that such a policy of continual changing of price would be very disturbing to the seller's customers, and particularly if certain customers felt that they had

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suffered through a change to the advantage of another customer it might cause customer ill-will, and so be disadvantageous.

By Mr. Moore:

Q. In your opinion, what would be likely to cause a change in the price quotations for such a product?

Mr. MacIntyre: The objection to that is that it
4980 does not call for economic theory, the statement of it, but what is a matter of psychology.

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: Overruled.

Answer it.

A. The causes would be sought I think in conditions either of demand or supply. If demand for the product were greatly reduced, and likely to continue to reduce, it might appear that this is a proper time to institute a reduction of price. If demand is great, increasing, and seems likely to continue, then there would be good reason for increasing the price, and any competitor who instituted such a price might expect competitors to follow him, and so we might establish a higher price that would continue for some time.

On the supply side, fundamental changes in costs of production would tend to lead to corresponding price changes. Merely a temporary change, or a change by one competitor only, would not have such effect; but new inventions, new processes, new machinery, which reduce the cost of production, would in a competitive industry tend voluntarily to lead to a lower price, and we can think of corresponding changes such as increase in wage rates, increase in transportation costs, which on the supply side would tend to lead to a higher price.

By Mr. Moore:

4981 Q. In your opinion as an economist, is it common for economists to differentiate between long range tendencies and short range fluctuations?

A. Yes, sir; it is. I think I have already done so myself once.

Q. May or may not long range tendencies manifest themselves under competitive conditions?

A. Oh, yes, they may.

Q. Well, is there any certainty as to it, whether they would or not?

Mr. MacIntyre: Well, now, that certainly is not proper testimony, as to how certain is it that one of these Respondents in the conduit industry is going to do one thing or another at any time.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: Except in accordance with their combination.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

A. It is very certain would that they would manifest themselves.

I think that is partly answered by my answer to a previous question, but in large business enterprises no manufacturer can afford to ignore the long range tenden-
4982 cies, and even though they may be different from immediate temporary conditions, he is bound to look ahead making his plans toward the more or less distant future, and so shape his policy with reference to long-range developments as he foresees them.

By Mr. Moore:

Q. I think you may have given your reasons for your answer to this question, but I would like to ask it and have a specific answer in the record.

In your opinion as an economist under competitive conditions can adjustments to long range tendencies in prices be made without short run fluctuations?

A. Yes, they can.

The managers of large scale enterprises must be men of sufficient knowledge and experience and foresight to look into the future, and as I think I did say a moment ago, they may not make the changes which might be indicated by conditions which they think are only temporary, because then they would have to make other changes counteracting them in the immediate future. But overlooking that, what they anticipate is the long range condition and they make their plans accordingly, and this would certainly be true in a competitive business.

Mr. MacIntyre: I move to strike the answer of the witness in that it is not a statement of economic theory but an attempt to set up standards for good, or medium, or bad management of business.

4983 Trial Examiner Norwood: Motion denied.

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By Mr. Moore:

Q. Now, then, Professor, to be specific, with reference to this industry, on the basis of the conditions in the rigid conduit industry as assumed in hypothetical question A, in your opinion as an economist is the rigid conduit industry one in which logically price adjustments might take place from a long range standpoint without short run fluctuations?

A. I think it is.

Q. Your answer is "yes," as I understand it?

A. Yes.

Q. Would the adjustment of prices in such an industry only in accordance with the long range outlook indicate to you as an economist an absence of competition?

Mr. MacIntyre: I object. It is the same old question, does he infer that these people are guilty or not guilty from the statement put to him.

Trial Examiner Norwood: No, I do not think so.

Now, read that question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

Answer.

A. No, it would not indicate the absence of competition. I have already stated what in my opinion are the considerations that would lead the managers of business 4984 in an industry such as this sort to take a long range view, and nothing in that answer required that they get together and consult over this thing. It is the sort of thing that each manager would consider for himself independently on the basis of his interest in his own enterprise without regard to the interest of other competitors.

By Mr. Moore:

Q. To look at it from a little different point of view, in your opinion as an economist does the adjustment of prices in such an industry in accordance with the long range outlook tend to have any effect on the degree of similarity of price quotations?

A. Yes, it would tend to a greater degree of similarity. When managers of business are making their plans based on their experience and knowledge and their provision of future long-range conditions, these managers of different enterprises have somewhat the same training and experience; they have before themselves the same body

of facts and knowledge; they would generally be high-grade men, with organizations adapted to assist them, and it would be quite natural to expect that on the basis of all considerations before them these different men would arrive at a similar conclusion as to the policies of their respective enterprises; and so we would have a tendency toward uniformity plus the reluctance to break the price or make frequent changes, to which I have
4985 already testified.

Q. Well, then, perhaps you have already answered it, but would such uniformity or similarity be promoted by any cause which tends to reduce the frequency in the change of quotation?

The Witness: May I hear that again, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. Yes, it would be. The less frequently the price changes, the more the tendency toward uniformity.

By Mr. Moore:

Q. Can the quotation of the same prices by several sellers result from the independent action of the sellers, or would such quotation of prices indicate to you monopolistic control?

Mr. MacIntyre: I object to that on the ground that it calls for the verdict in the case.

Trial Examiner Norwood: Read it again.

(Question read.)

Trial Examiner Norwood: Objection overruled.

A. Such similarity or identity would not indicate to me as an economist monopoly control, because the decisions which have led to that uniformity of price could normally be made by separate manufacturers each one acting independently in his own interest without regard to the interest of others and without collusion or agreement with others.

4986 By Mr. Moore:

Q. Under the conditions assumed in hypothetical question A, as an economist, what degree of similarity in the prices and other selling terms of the various conduit sellers would you expect to find in the rigid conduit industry?

A. I would expect to find a very high degree of similarity both as to prices and as to the other conditions.

Q. Why would you expect that?

A. Because just as soon as one competitor departs from the prevailing price, or from the prevailing terms and conditions, if his offering is less favorable than the others, he makes no sales; and if it is more favorable, either in lower price or in offering more for the money, he has nothing to—ordinarily nothing to gain from it, except in an occasional circumstance in which he is prepared to initiate a real price cut. And all that has been said about the tendency toward uniformity of prices I think applies equally to uniformity of the other conditions, the quality of the product, the services rendered, because all of those things enter into the considerations which the buyer receives in return for the price.

Trial Examiner Norwood: I think we might as well recess till tomorrow morning.

Recess to 10 o'clock tomorrow morning, Eastern War Time.

4987 We will reconvene in Room 532, where we were this morning.

(Whereupon, at 4:18 o'clock p. m., February 10, 1942, the hearing in the above-entitled matter was adjourned.)

4989 PROCEEDINGS.

Trial Examiner Norwood: Hearing come to order.

Pursuant to adjournment on yesterday, the hearing in Docket 4452 is now reconvened at 10 o'clock a. m., Eastern War Time, February 11, 1942, in Room 532, Office of the Federal Trade Commission, Washington, D. C.

Please note the appearances.

Professor Fairchild, resume the stand, please.

FRED ROGERS FAIRCHILD resumed the stand and testified further as follows:

Direct Examination (Continued).

Trial Examiner Norwood: Before I forget it, I shall overrule the objection and receive Respondents' Exhibit 334-A to D in evidence.

RESPONDENTS' EXHIBIT NO. 334-A to 334-D, was offered and received in evidence.

Trial Examiner Norwood: Proceed with the examination.

Mr. Moore: Now, Mr. Examiner, after we adjourned yesterday, Professor Fairchild told me that he had not completed his answer to the last question, so, if agreeable to you, I would like to have the previous question read—or I will read it from the transcript—

4990 Trial Examiner Norwood: Very well.

Mr. Moore: —and—

Trial Examiner Norwood: You might just ask—

Mr. Moore: Well, the last question was: "Why?" So that, in order for Professor Fairchild to understand what is asked, it seems to me I should read the previous question and the answer.

Trial Examiner Norwood: All right.

Mr. Moore: And it is on page 4986 of the record. The question is, if I may read it:

"Under the conditions assumed in hypothetical question A, as an economist, what degree of similarity in the prices and other selling terms of the various conduit sellers would you expect to find in the rigid conduit industry?"

And the answer was:

"I would expect to find a very high degree of similarity both as to prices and as to the other conditions."

Then the question that I asked, which Professor Fairchild advised me after the hearing that he had not completed the answer, was:

"Why would you expect that?"

Trial Examiner Norwood: You may complete your answer to that.

A. (Continuing) Completing my answer, I would say that the general economic principle is that in a given

4991 competitive market at a given time there can only be one price for a homogeneous product. Now, rigid conduit is, I understand, a homogeneous product, and when sold in a competitive market I would presume it to be sold at uniform price for all buyers and all sellers.

That completes my answer.

By Mr. Moore:

Q. Now, when you state that there would be only one price at a given time in a given market, do you mean that strictly always that would be the case?

A. That, as I said, is the general rule. There are two

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possible exceptions. There might be at any time a few scattered sales off the market price, which would be the result of lack of complete information upon the part of a few buyers and sellers.

The second exception would arise at a time when there is being a change in price, the price was shifting from one price to another on account of changing market conditions. That sort of thing takes some appreciable period of time, and during that time there might be different prices.

Q. To you, as an economist, is similarity of selling terms, under the assumed conditions, that is, the conditions which are assumed in hypothetical question A, an indication of lack of competition?

A. No, sir; I do not. My answer was not quite
4992 in proper grammatical form to that question.

Mr. Moore: Will you read the question again, then, so that we know you have it correctly?

(Question read.)

Mr. MacIntyre: I object to the question on the ground that it is tripling the record. It was covered two or three times yesterday, that very question.

Trial Examiner Norwood: He may answer it this time. Overruled.

A. No; this similarity is to me not an indication of lack of competition.

Q. Under conditions assumed in hypothetical question A, when an individual seller adheres to his announced prices, terms and conditions of sale without deviation until other prices, terms and conditions of sale are quoted and published by some other seller, does that indicate to you, as an economist, that such seller is not engaged in competition?

A. No, it does not. Competition does not require that sellers be continually changing their prices. The decision to meet the prevailing price in the market or the price offered by other competitors is itself a competitive act. Even though changes in price are not being offered, other competitive acts are going on. The sellers are standing by ready to act in case of opportunity. They are watching the actions of their competitors; they are watch-
4993 ing the conditions of the market; they are—the conditions of demand, whether building operations are

active or sluggish. They have their salesmen out who are actually engaged in making contacts with—

Trial Examiner Norwood: Hasn't he answered that question?

Mr. Moore: Well, I don't know. I think he has partly answered it; perhaps he has answered it entirely.

Trial Examiner Norwood: Well, go ahead.

A. (Continuing) What I am trying to do, Your Honor, is to point out that competition involves other things than mere offer of changed prices, and I am now trying to describe certain things which I have mentioned in previous testimony, but from the point of view of their being parts of the normal operation of competition.

Trial Examiner Norwood: Off the record just a minute.

(Discussion off the record.)

Trial Examiner Norwood: Back to the record.

A. (Continuing) As I was saying, these actions are going on, and these are parts of the normal process of competition. The fact that price changes are not being made at the same time does not deny the condition of competition.

For example, if sellers in a given market should learn some day that another seller had entered that market, that he had brought in his sales force, that they
4994 were going about soliciting sales and checking up on competitors' actions, reporting back to the manufacturer, I do not think that these sellers previously in the market would say that they had not been subjected to any additional competition even though the new competitor had so far chosen to meet the prevailing price.

Mr. MacIntyre: If Your Honor please, I move to strike from the answer that statement just made by the witness that he does not think that sellers would say such and such.

Trial Examiner Norwood: Objection overruled.

A. (Continuing.) All of these things, then, represent the normal process of competition, and I would say that a state of competition prevails in this market even at a time when price changes are not being offered.

One might illustrate this by the condition, two armies facing each other across no man's land. They are in a state of war, even though at the particular moment there may be no shooting going on.

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By Mr. Moore:

Q. How do you, as an economist, define the term "cross-hauling"?

A. I would define "cross-hauling" as resulting when one manufacturer sells his product at a point somewhere between the location of the mill of another manu-
4995 facturer and the point—and a point at which that other manufacturer is selling, so that the product will be passing in opposite directions over approximately the same route. I would not say the route had to be identical, provided the goods were passing in opposite directions in substantially parallel lines and fairly close.

Q. You mean by that, as I understand it, when you say "the goods are passing in opposite directions," the goods of one seller are passing in a direction opposite to that in which the goods of the other seller are passing?

A. Yes, that is precisely the meaning.

Q. Under the conditions assumed in hypothetical question A, would the occurrence of cross-hauling indicate to you, as an economist, an absence of competition?

A. No, it would not. I might add that it would be, on the contrary, one of the indications of a condition of competition.

Q. Would you expect the elimination of cross-hauling to occur under conditions of monopoly or under conditions of competition?

A. Cross-hauling would naturally occur under conditions of competition. One of the first things that a monopoly or combination would probably do would be to agree upon a division of selling territory and so abolish the costs of cross-hauling.

4996 Trial Examiner Norwood: That causes a certain amount of waste in cross-hauling?

The Witness: Yes, sir; there is a certain amount of waste in cross-hauling which I regard as one of the normal costs of competition but which might be avoided by monopoly or a combination.

Mr. Moore: I had planned to come to that, Your Honor.

By Mr. Moore:

Q. From your observations of business behavior, as an economist, what reasons, if any, can you find for the occurrence of cross-hauling, under the conditions assumed in hypothetical question A?

A. Cross-hauling occurs as one of the normal accompaniments of a competitive industry. The several manufacturers seek to enlarge their field of operations, to increase their sales, to enter into a large number of markets, for reasons which I think I have already set forth in previous answers, and in so doing different manufacturers reach out and enter into the territory of other manufacturers. When they do that cross-hauling results.

Q. If each manufacturer of conduit, under the conditions assumed in hypothetical question A, refrained from selling in any market where the freight from his plant was higher than the freight from the plant of some other
4997 manufacturer, unless the latter were operating at capacity—that is, his capacity—what would be the economic effects?

Mr. MacIntyre: May I have the question read?

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. MacIntyre: That is objected to because it calls for speculation.

Trial Examiner Norwood: Overruled.

A. The economic effect of this manufacturer refraining from selling would be to reduce competition. There would be just one less seller in that market with whom the buyers could have contact.

Mr. Moore: Mr. Examiner, the next question is in line with the question which you started, or one question which you asked, and I would like to ask the question in a little different form on the same subject.

Trial Examiner Norwood: Go ahead.

By Mr. Moore:

Q. Under the conditions assumed in hypothetical question A, is the cost of cross-hauling necessarily a burden to the buyers?

A. No; it is—it is not. As I just said in answer to the Examiner's question, cross-hauling is one of the essential features of the practice of competition. As such it involves cost, and in a certain sense that may be re-
4998 garded as a—as a waste. In that respect it is little if any different from the costs of advertising, of supporting a staff of salesmen, and other costs of distribution. Those are all the necessary accompaniments and costs of normal competitive industry. They could be avoided in

part or in whole by going over to a state of monopoly or a combination, but it is my opinion that the advantages of competition to the buyers, especially the tendency of competition to hold price increases in check is so important that these costs of competition are well worth while to the buyers as compared with a condition of monopoly or combination in which cross-hauling might be reduced or eliminated.

I might add that cross-hauling may permit certain manufacturers to expand their businesses to a greater extent than would otherwise be possible and so obtain the advantages of large scale production, and those advantages might lead to reduction of cost to the advantage of the buyer.

Mr. MacIntyre: I want to register at this time an objection to the witness, after having answered the question and stated his explanation to his answer, to entering into further discourse without further questions being asked.

Trial Examiner Norwood: You will have to handle that through objections at the time and motions to strike.

Mr. MacIntyre: Most of the motions to strike that were made yesterday afternoon and the one this morn-
4999 ing were directed to that point.

Trial Examiner Norwood: All right. Go ahead.

The Witness: My intention, Your Honor, was to complete my answer to the question.

Trial Examiner Norwood: Yes.

The Witness: I was asked whether this was a burden to—

Trial Examiner Norwood: You don't have to say that.

The Witness: I beg your pardon.

Trial Examiner Norwood: The record shows the counsel's attitude in the matter.

Go ahead.

A. (Continuing.) Completing my answer, it is possible that on occasion the cost of cross-hauling may be borne by the manufacturers or sellers themselves and so for a time at least not be a burden upon the buyers.

By Mr. Moore:

Q. Can cross-hauling, in your opinion, occur when sellers quote f.o.b. factory prices, that is, f.o.b. mill prices?

A. If sellers quote f.o.b. prices which are related to delivered prices, then cross-hauling might—might result

just as it does under the basing-point method. If the f.o.b. prices were uniform f.o.b. mill prices, then cross-hauling could not result except in the case where a particular manufacturer chose not to seek to sell at some point within
5000 his natural territory. In that case a competitor might come into his territory and sell at that point, with the result of some cross-hauling, but that would, I think, be the exceptional case.

Trial Examiner Norwood: Proceed.

Read the last part of that answer.

(Answer read.)

By Mr. Moore:

Q. To you, as an economist, is the occurrence of cross-hauling indicative of the existence of competition or of monopoly?

A. It is indicative of the condition of competition.

Q. Is there any principle of economics whereby, in your opinion, nearby customers are naturally entitled to a price advantage by reason of their proximity to points of production?

Mr. MacIntyre: I object to that. It is not a matter that calls for a statement of economic theory. It is a matter of pure common decency and fairness to people and which is to be decided by the tribunal and not by witness.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. MacIntyre: Now, that goes—

Trial Examiner Norwood: Is that any part of economic theory?

5001 Mr. MacIntyre: I think it—

Trial Examiner Norwood: Would the answer to that be any part? I will ask the witness that and abide by his decision.

The Witness: My answer would say that there is no such principle in economic theory. That would be my contribution there.

Trial Examiner Norwood: I think it is all right. Objection sustained.

You may bring out any economic effects of this thing.

Mr. Moore: But, Mr. Examiner, the very objection which counsel made shows the importance of the question,

and it should be answered, and the answer should be shown in the record. He says that common decency requires it.

Trial Examiner Norwood: No.

Mr. Moore: Now, the question is to the effect that common decency doesn't require it except that you interpret common decency as in accord with the principles of economics.

Trial Examiner Norwood: Yes, but we don't have any experts in common decency.

Mr. Moore: Yes, you do. One of them is right on the other side of the aisle here.

Trial Examiner Norwood: Objection sustained. Go ahead.

5002 By Mr. Moore:

Q. Can you give any examples in which the advantages of location with respect to markets accrue to sellers?

A. Such an example would occur if a seller moved into a location close to a market, he would have a shorter haul and lower freight cost than other competitors located farther away freightwise from the market. He would be privileged to meet the prevailing price in that market, and so himself have the advantage of the lower cost of shipping his goods from the point of production to the market. That advantage—well, there is no reason why any buyer who buys his goods should pay a lower price than buyers who buy goods from his competitors, so that this producer has the—the seller has the advantage and buyers do not have the advantage of his proximity to the market.

Q. When you say that that seller who is near the market has a less freight cost, what do you mean?

A. I mean that the freight charge for delivering his goods from the point of manufacture to the market is less than the corresponding charge for his competitors.

Q. If a company were contemplating building a new manufacturing plant, as an economist what would you expect the responsible officers of that company to take into account in determining where to locate the plant?

Mr. MacIntyre: That is objected to because it
5003 does not call for a statement of economic theory.

Trial Examiner Norwood: Let us see. Read it.

Mr. MacIntyre: And I may add further that even if it did, it would have no application here by virtue of relevancy and materiality, because it could not be applied to an individual case.

Trial Examiner Norwood: Well, let him read it.

(Question read.)

Trial Examiner Norwood: Yes, I think that asks for an economic opinion there. He must answer it from that standpoint.

Objection overruled.

A. In my opinion, these officers would take into account considerations of two different groups.

In the first place, they would consider the matter of proximity to the selling market and would be inclined, other things being equal, to locate the plant close to the market at which the goods were to be sold, thus saving in cost of freight.

On the other hand, they would consider such matters as the proximity to their materials, thus considering the matter of the cost of freight on materials from source to factory; and in the same connection they would consider other factors bearing upon costs of production, such as
the market for labor, skilled and unskilled, access-
5004 ability to power, financial facilities, possible presence
of ancillary industries on which this industry is dependent, and such matters.

Whether the proximity to the selling market or to sources of materials would govern would depend upon various details, as to freight costs on materials, freight costs on the finished product, and relations of these costs to the cost or price of the finished product.

By Mr. Moore:

Q. If the choice of location is near a market, in your opinion as an economist would the savings in transportation costs naturally accrue to the customers in that market?

Mr. MacIntyre: May I have that question read?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. MacIntyre: That is objected to. It is not a question that calls for any statement of economic theory. It calls for a statement as to what the psychology of the operators concerned would be in meeting a specific situation.

Trial Examiner Norwood: I think that is exactly what the economic theory is.

Mr. MacIntyre: Economic theory, as I understand it—possibly, of course, I have a lack of understanding or mis-

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understanding, but it is a statement of recognized principles over a long period of time and considered by economists to have the effect or force of law.

5005 Trial Examiner Norwood: Objection overruled.

The Witness: Could I hear that question read again, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. No, the savings would not. This new seller would be under no obligation to offer prices lower than the price prevailing in the market. Even if he did, and others followed, at the new price level, his customers would be getting no lower prices than the customers who bought from other producers; and if he raised the price, and others followed, again the price would be the same to all buyers, and the buyer who bought from him would have no advantage on account of his proximity to the market.

Trial Examiner Norwood: Well, doesn't that presuppose some sort of a system of making prices?

The Witness: Well, I think, Your Honor, that presupposes the system which has been described a good deal at length in this testimony. I myself have testified to it, whereby a change in the price by one seller, if an increase, will not be effective unless others followed, and if a decrease, will certainly be followed by the others. So, it all fits into the general economic principle that in a competitive market a homogeneous product at one time will have one uniform price.

5006 By Mr. Moore:

Q. Under the conditions assumed in hypothetical question A, in your opinion as an economist, are there any economies to the conduit manufacturer on sales made to customers in more remote markets which might correspond to the savings in freight to nearby customers?

Mr. MacIntyre: That is objected to. There is nothing in the hypothetical question A which presents facts so as to enlighten anyone as to what would result in that direction as asked by this question.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I think that is clear.

Objection overruled.

A. Yes, there are certainly such savings. The sales to

more remote markets might permit of increased total volumes of sales, and so a distribution of the overhead cost over the larger number of units, and so economy. Sales to outside markets might actually increase the total amount of the business, of the production, so as to give this manufacturer advantages of large scale production, and so economy.

Trial Examiner Norwood: Might this be reflected in a lower price to the nearby purchaser?

The Witness: It might be so, but the answer is that, offsetting or corresponding to the advantage of low
5007 freight costs to the nearby markets, here are advantages that might come from sales in the more remote markets.

Trial Examiner Norwood: Go ahead.

By Mr. Moore:

Q. I have a few questions based on Dr. Nourse's testimony in this case.

In his testimony, at page 1935, Dr. Nourse referred to "administered prices."

As an economist, what do you understand by the term "administered prices"?

A. By "administered prices" I understand prices fixed by a seller in connection with a price policy under which he sets his price and then sells as much as he can at that price. The automobile industry would be a good illustration, I should think.

The antithesis to that would be a price policy in which the seller determined the quantity he would sell and then accepted whatever price was necessary to work off that quantity.

Put in simple terms, in the case of administered prices, the seller fixes the price and the market fixes the quantity; the other policy, the seller fixes the quantity and the market fixes the price.

Q. Can you give us any examples of the latter? Common examples.

5008 A. Well, the simplest example would be the auction sale, of course. Other examples would be the Stock Exchange, wheat and other produce exchanges.

Q. Are so-called administered prices competitive or non-competitive prices?

A. They are competitive prices just as much as any

other prices. That is, the process of determining what price policy to follow, and choosing to follow the policy of administered prices, may be perfectly well adopted by one seller in his own interest independently without consultation or combination with other sellers.

Q. If a seller quotes what some economists call administered prices, does that take him out of a competitive market?

A. No, sir; it does not, for reasons I think which I have sufficiently stated.

Q. In his testimony Dr. Nourse stated, at page 1929, quote—

Mr. MacIntyre: I object to quoting anybody's testimony to this witness. It is not necessary or proper.

Trial Examiner Norwood: Objection sustained.

You bring out your economic principle, which may or may not agree with what some other economist has said, but I do not think that you may read passages there and ask him if he agrees to them or not. You ask for the principle, and you may quote from that, but not tell the
5009 witness you are quoting from it. You can incorporate it in your question so that there is no doubt that it is a contradiction.

By Mr. Moore:

Q. If you find quotations of producers who presumably do have differences in their production situation and in their costs, and they are all making the same quotation, would that seem to you, as an economist, to indicate either a miraculous agreement on what is good policy amongst them or else some means of working out a uniform plan of quoting the same price as being desirable for the trade as a whole, for the group, that is, whatever it may be?

A. No, sir. That would seem to me to be the normal working out of competitive practice. These different sellers enter that market and, whatever their costs may have been, they have to decide whether to meet the prevailing market price or not. If a seller meets the price, or if a seller declines to meet the price, and declines to sell in that market, I see nothing miraculous about it or nothing that requires any formulation of some plan by which they all work in concert.

Q. As an economist, would you expect each seller to quote a price based on cost,—that is, his cost?

A. No, I would not. I would expect each seller would come into the market, take account of the price prevailing there, and determine whether at that price it was advantageous for him to offer to sell or not. That would have
5010 a relation to his cost, especially his cost that he might anticipate in the future, but it would not be a price directly based upon his cost; and if his costs were low, it would therefore be no reason why he should offer a lower price than prevailed in the market; if his costs were high, he would not charge a higher price than that that prevailed in the market, unless it happened to be the condition in which he were prepared to undertake the initiation of a general price rise.

Trial Examiner Norwood: Suppose he were entering a new market, where the others enjoyed the business, would it be normal economic reaction for him to charge less than the price that he finds in that market in order to get a footing?

The Witness: I would not think so, Your Honor, because if he did that he would be aware that he would certainly expect that those already in the market would immediately meet his reduction. There might be a situation in which he were prepared to force that general price reduction, but the point of my answer is that that is not directly related to his own costs. He might do that anyway, whether his costs were high or low.

Trial Examiner Norwood: Yes.

The Witness: And he does not arrive at his decision as to a price to offer by any mathematical calculating starting with his own costs.

By Mr. Moore:

5011 Q. If each seller does not base his price quotation on his costs does that indicate to you a lack of competition?

A. No, it does not.

Mr. Moore: Mr. Examiner, I desire to come within the rule, and I think I am doing so if I make this statement and ask a question.

By Mr. Moore:

Q. Dr. Nourse stated in his testimony, in substance, that the natural—

Trial Examiner Norwood: I do not think you need to inform this witness that Dr. Nourse testified to. You ask

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this witness any questions that will bring out his testimony on the same points, and then they may be compared.

Mr. MacIntyre: I would also object to counsel quoting any testimony by any witness in this case, or from anywhere else, and asking the witness to give an answer to that, even if he did not name the witness. Under these circumstances the harm is as bad one way as the other.

Trial Examiner Norwood: No, I cannot follow you at all on that. He can use any language that any other witness has used and ask him to affirm or deny it.

By Mr. Moore:

Q. What would you say as to whether the natural competitive processes of making prices on the part of a producer is to decide what he can produce and sell in his
5012 own local market and whether beyond that point, in terms of quotation, he could quote in the competitive market anything except a price which reflects his cost of production?

A. That does not seem to me to describe the normal way in which a seller would determine his price. I interpret that to mean that he first determines his price in the local market, and then by some addition or calculation arrives at the price he will charge in another market. I do not think that is the way sellers determine their prices, and I think I have sufficiently explained why they do not in my previous testimony.

Q. If a seller seeks to sell both in his local market and in more remote markets, would you expect him to be governed more by cost in his price quotations in the more remote markets than in the local market?

A. No, I would not. Of course, in a local market, where he has more of a monopoly position, he might be more inclined to charge more than the cost, and in more remote markets, where there was more competition, he might be more inclined to charge less than the cost, but I do not think that cost would influence him more in one market than in another.

Q. In the case of a manufacturing company which seeks to sell a large output over a wide area, are there any obstacles, in your judgment as an economist, which would prevent the company starting negotiations with each
5013 prospective customer by quoting a price based on cost and then modifying that quotation by a process of

bargaining until a mutually acceptable price was arrived at?

A. Yes, there are obstacles. In fact, I do not see how a seller could do business that way. His customer would be not at all interested in any proposition which involved a price higher than the prices offered by other competitors, even if it was pointed out to the customer that this price was based on the seller's costs.

On the other hand, the customer would certainly be very much interested in a proposition which involved a price lower than that being offered by other sellers, and the customer would not care whether that was related to the sellers' costs or not, but I do not see why the seller would be under any obligation to make such an offer of a lower price just because his cost was low.

Q. What is your opinion as to whether a purchaser may expect normally that the delivered cost to him as quoted for future sales by a number of sellers who are located in different places variously freightwise from his destination will be identical or uniform as to all sellers quoting?

A. In my opinion, the purchaser should normally expect that the various quotations would be uniform.

Trial Examiner Norwood: He would expect them to be based on the price quoted by the nearest seller?

5014 The Witness: I would not think it would matter whether the sellers were near or far as long as they are actually offering quotations in this market.

Trial Examiner Norwood: He would not figure on that, or estimate what he would have to pay based on the distance to the nearest mill?

The Witness: I do not think so, Your Honor. I do not think that the buyer is particularly interested in the costs of the sellers. What he is interested in, as I think I have already said, is in getting terms no less favorable than other buyers, especially his competitors, in that locality.

Trial Examiner Norwood: Go ahead.

By Mr. Moore:

Q. If there were an identity of quoted prices for a standardized commodity at a particular destination from which the sellers are located at different distances freight-

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wise, would that identity of quoted prices indicate to you the absence of a competitive market?

A. No, sir. Such identity would not be an indication of the absence of a competitive market.

Q. If it were assumed further that the competing sellers who choose to quote at that particular point knew from prior sales made at that place, or from information conveyed to them by their salesmen, that the market prices on that commodity had reached a common level,

5015 would the identity of prices quoted for the future necessarily be inconsistent with your concept as an economist of a competitive market?

Mr. MacIntyre: I object. The question has been asked and answered several times in different forms, and I object to it again on the further ground that it does not call for a statement of economic theory, but one for a psychologist.

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: Objection overruled.

Answer.

A. In my opinion, such identity would not be inconsistent with a competitive market. I would think that any one of these competitors under those conditions might make the decision to meet the prevailing price independently without consultation or combination with others.

By Mr. Moore:

Q. If you were to assume that a seller makes a practice of accepting from his various customers different sums of money per unit for his standardized product, and if there were not differences in the quality or cost of selling involved, on what economic theory can that practice of the seller be explained?

The Witness: May I hear that question again please?

5016 Trial Examiner Norwood: Do you want it read?

The Witness: If you please.

Trial Examiner Norwood: Read it.

(Question read.)

A. I should think it would be explained on the theory that presumably this seller has chosen to engage in freight absorption, which is a perfectly normal aspect of competitive marketing.

By Mr. Moore:

Q. If a seller makes a practice of accepting from his various customers different sums of money per unit for his standardized product, and if there were not differences in the quantity or cost of selling involved, does that indicate to you as an economist a lack of competition?

A. No, it does not.

Mr. Moore: May we take a recess at this point, Mr. Examiner?

Trial Examiner Norwood: Five-minute recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

Mr. Moore: I have one additional question.

By Mr. Moore:

Q. Professor Fairchild, under the conditions assumed in hypothetical question A, as an economist, will you state whether or not it is possible for a basing-point
5017 method of quoting prices to develop from the play of natural economic forces without any collusive or coercive activity on the part of manufacturers or wholesale distributors or agents selling rigid steel conduit for their suppliers or manufacturer principals?

Mr. MacIntyre: May we have that question re-read?

(Question read.)

Mr. MacIntyre: I object to the question on the ground that there has been no foundation laid to show that this witness has ever been conversant with the details of the operation of a basing-point system, in fact, and as to how any one of those in existence in this country came into existence, whether by collusion or otherwise. Consequently, he is incompetent as tendered here to testify on that subject.

Trial Examiner Norwood: Read the question.

(Question re-read.)

Mr. MacIntyre: Now, I submit that unless it is shown that the witness has direct knowledge that a set of circumstances such as those has arisen without collusion, he isn't in a position to testify that it has arisen without collusion.

Trial Examiner Norwood: You may cross-examine him and bring that out if it is not fair.

Mr. MacIntyre: There has been no foundation laid, though, for the question.

5018 Trial Examiner Norwood: I think so.

You must answer that from the economic standpoint, of course, just what you judge would be the natural operation of economic forces in the circumstances stated in the hypothetical question.

Objection overruled. Answer the question.

A. It is my opinion that a basing-point method of selling and pricing could result from the operation of natural economic forces without collusion or coercion on the part of any of the classes named in this question.

Mr. Moore: Now, Mr. Examiner, that completes our questioning on behalf of our client, but before I turn the witness over to counsel for the Commission I would like to give—to have you give to counsel representing other Respondents the opportunity of asking questions if they wish.

Trial Examiner Norwood: Oh, yes.

Any further questions?

Mr. Stewart: No questions.

Mr. Bozeman: No questions.

Trial Examiner Norwood: Cross-examine.

Mr. MacIntyre: I want to say that since it is 11:15 now, I am prepared to go ahead with a few questions so that we will not lose all of the time before lunch, but if I do that I would like a fairly long lunch period in considering the testimony given by the witness before
5019 going into the longer cross-examination during the afternoon.

Trial Examiner Norwood: The counsel may have the time. Use as much as you can now.

Cross-Examination by Mr. MacIntyre.

Q. Dr. Fairchild, all of the answers that you have given here as to what you would expect to occur—as to what you would expect, as an economist, to occur have been based, have they, with the thought that they would occur in the situation outlined to you in Mr. Moore's hypothetical question A and in no other situation? Is that the way in which you answered them?

Mr. Moore: I don't think that question is quite fair, Your Honor. I object to it because he has answered many questions here which I have not prefaced by stating that "On the facts assumed in the hypothetical question." If the question is limited to those, very well.

Trial Examiner Norwood: The witness can clarify that.

Mr. MacIntyre: Can't we find out, though, whether the witness in giving those answers was giving his answer as to what he would expect these people to do, as he then saw it, in this industry or in some other industry?

Trial Examiner Norwood: He can give us the basis of any particular opinion that he has given at all, that
5020 is, if the assumptions there are his own knowledge and are his generally accepted economic learning.

Mr. Moore: May we have the question read? I think we will perhaps then see more clearly what my objection was.

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: He said based on the thought,

Answer the question.

Mr. Moore: May I just say one word?

Trial Examiner Norwood: Yes.

Mr. Moore: If you will remember the question, I have asked many questions that were general—

Trial Examiner Norwood: No use of your discussing that before the witness. I will send the witness out if you want to.

Mr. Moore: Well,—

Trial Examiner Norwood: I will overrule the objection and let the witness explain it.

A. Well, the answer to that question is, no, a good many of the questions asked me were not related to the—definitely to the statement of facts in the hypothetical question, and I answered those questions according to the term of the questions themselves. Where questions were answered—were asked based upon certain hypothet-
5021 ical statements of assumed fact I undertook to answer them with respect to those assumptions of fact. When I said that certain things would occur under certain assumptions of fact, it doesn't necessarily follow that those things would not have occurred under some other assumptions of fact. I wasn't asked about that.

By Mr. MacIntyre:

Q. But in your answers did you assume that they would occur under this set of facts assumed by Mr. Moore in his hypothetical question A?

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A. When the question itself referred to the facts there assumed, I framed my answer accordingly with respect to those assumptions.

Q. Take this question that he asked you as to what a man would do, in your opinion as an economist, in the locating of a plant. Is your answer there unqualified or is it limited to a situation which was outlined to you by Mr. Moore in his hypothetical question A?

A. That answer would be true with respect to the conditions outlined in those hypothetical questions. It might be true under other conditions.

Q. Well, do you want your answer as you gave it to him there in that connection to be unqualified and not limited to the situation outlined to you in his hypothetical question A?

A. I don't understand what you man by "qualified."

Q. I can't make it plainer.

5022 Trial Examiner Norwood: Read the question. I think that is rather clear there. Read it.

(Question read.)

A. Which answer do you refer to?

By Mr. MacIntyre:

Q. The one that you gave with respect to the location—or what the men would do with respect to the location of a plant.

A. I think I have already answered that question. I think my answer would be correct with relation to the facts assumed in the hypothetical statement, but I am not saying that that same action might not occur under other conditions.

Q. Your answers to him concerning administered prices, were they limited to what you, as an economist, would expect operators to do in the situation outlined in his hypothetical question A or in some other situation?

A. Well, there was a very broad question, and the answer was correspondingly broad. It would apply to any conditions in which the definition which I have stated is applicable.

Q. Well, have you given any answer to any of the questions propounded to you by Mr. Moore based upon any facts other than those assumed by him in the hypothetical questions put to you by him?

A. Well, I can't say that my mind is entirely blank as

to all facts except those that were named in the hypothetical question, if that is what your question means.

5023 Q. Do you have any knowledge as to any facts which purport to exist in the rigid steel conduit industry, other than those which were assumed by him to exist, as stated in his hypothetical questions?

A. I might have incidentally picked up some other facts. It would be a little difficult for me to check my knowledge step by step with all the facts in this hypothetical question.

Q. From whom did you get those?

A. I couldn't say. From the conversations with various people, some conversations with counsel no doubt, conversations with friends of mine, and some reading.

Q. Well, when did you first have a conversation with the counsel in this case from whom you might have secured some knowledge as to what they considered to be the facts in the case, in addition to those stated to you in the questions propounded here by Mr. Moore?

A. I can't remember just the date when I came in connection with this case. It was some months ago, and during that time there have been some conversations.

Q. And during the course of those conversations, Mr. Moore has informed you what he stated he considered the facts in the rigid steel conduit industry to be?

A. I wouldn't say that. I stand by my previous statement that in these conversations I can't say that I

5024 haven't incidentally picked up some information and I can't be certain that all of the information I may have picked up is included in the hypothetical statement of facts.

Q. You are not able at this time, then, to tell us what additional facts that Mr. Moore has assumed in his statements to you in conversations previous to your taking the stand, to those which he has stated to you since you have taken the stand?

Mr. Moore: Now, just a moment. Let us see what that means.

Trial Examiner Norwood: Does counsel object to the question?

Mr. Moore: Certainly, until I know what it means. I am asking what it means.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: Based on the witness' last answer, we may have the answer as well as the question.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I think he can answer that, whether he is or is not able to do that.

Mr. Moore: Yes, but, Your Honor, it assumes that I have given to Professor Fairchild facts since he has taken the stand. Now, if that be true he can ask the question—

5025 the question can be answered by him and not be made an assumption on the basis of the question because it is not fair otherwise.

Trial Examiner Norwood: Did the witness say that that had occurred?

Mr. MacIntyre: Well, if Your Honor please, the witness has stated in the last 10 minutes that it is probable that—and he considers—he has received some information concerning the rigid steel conduit industry in his conversations with counsel.

Trial Examiner Norwood: Don't assume in your question anything beyond what the witness has said.

Mr. MacIntyre: I don't think I have, and, of course, the witness does not need to tell me or you or anyone else that Mr. Moore has assumed certain statements of facts in his questions to the witness since he has taken the stand.

Trial Examiner Norwood: That is not the question. You are asking the witness what—

Mr. MacIntyre: Well, I am asking for the difference between the two.

Trial Examiner Norwood: Yes, but you will have to establish the existence of one or the other and then you can establish the difference.

Mr. Moore: And, further than that, Mr. Examiner, the pertinent question is, in answering the questions has

5026 he taken into consideration any facts other than those that are set forth in the hypothetical question A?

Mr. MacIntyre: That question has been asked and answered and I am past it.

Trial Examiner Norwood: I will sustain the objection to the question in the present form. Now, you can clarify this situation.

By Mr. MacIntyre:

Q. Are you now in a position, Dr. Fairchild, to tell us definitely whether or not that you have secured any information concerning the rigid steel conduit industry in the form of statements by anyone as to what the facts are in the industry before you took the stand here?

Mr. Moore: I object to that, Mr. Examiner. It is entirely irrelevant and immaterial. The question is, Has he—the point is, Has he got any information which he has used? He may have asked who was the president of one of these—one of these concerns that are engaged in this industry. What of it if he did? Someone answered that. I don't see any pertinency of that at all.

Trial Examiner Norwood: Objection overruled. This is cross-examination.

Go ahead.

A. I, as I say, incidentally may have picked up some facts—information about this industry in consultations mostly before I took the stand rather than after, and
5027 yet those all—that information has not entered into my answers to questions which were based upon assumed facts in the hypothetical statement of facts.

By Mr. MacIntyre:

Q. In other words, then, all of your answers that you have given here concerning—no; all of the answers that you have given here have been based entirely upon the assumptions of fact which were propounded to you in the questions by Mr. Moore during the time you have been on the stand?

Mr. Moore: Now, I object to that.

Q. And on nothing else?

Mr. Moore: I object to that. The question has already been asked and answered.

Trial Examiner Norwood: Objection overruled.

A. Not all of my answers because some of my answers were not related to the hypothetical statement of facts, but, so far as questions were asked me with relation to a statement of hypothetical facts, I have undertaken to answer those questions definitely and only with relation to the facts there assumed.

By Mr. MacIntyre:

Q. Well, in the answers to any of the questions asked you by Mr. Moore, you haven't taken into account any

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information or knowledge as to what someone has said the facts were in the industry, other than those which
5028 were stated to you by Mr. Moore during the course of the testimony you have given here; is that correct?

A. Well, I think it is correct to say that my answers have been—so far as they involve knowledge of facts, have been principally based on such facts as are contained in the hypothetical statement.

Q. Are they based principally or in part upon those or totally?

A. I hesitate to say "totally" because I can't have avoided picking up some information in conferences, probably of little significance, and in answering the questions the factual materials which I have used have been, I think, substantially covered in the hypothetical statement of fact.

Q. Are you now prepared to tell us what those things were that you did pick up in these conversations with counsel?

A. I would find that a very difficult thing to do because, as I say, they are incidental; they are—many of them have not much significance to the answers I have given, and they are related to or associated with statements in the hypothetical question. It would be very difficult for me to separate them out into two classes that way and tell you substantial facts that I have obtained, other than those in the hypothetical statement.

Q. In other words, you are not able to give them to us now; is that correct?

5029 A. Correct, with the qualifications that I have stated.

Mr. MacIntyre: If Your Honor please, then, I move to strike all answers given by this witness to the hypothetical questions, or which purport to have been given in response to the hypothetical questions propounded by Mr. Moore here, because it is now clear that the answers were based, according to the testimony of this witness, upon those and some additional information which is not provided to me for use on the cross-examination of this witness. We don't even known what they are.

Trial Examiner Norwood: Motion denied. Proceed.

By Mr. MacIntyre:

Q. Have you talked with anyone, other than your counsel, during the last few months in connection with

your preparation for your testimony here about the matters which have been involved in your testimony?

A. Yes, I have talked with some other people.

Q. Will you please name them, giving their full names and addresses, if you can.

A. I have talked with Professor Copeland. I don't know whether you include him among counsel or not.

Q. Will you give his full name and any association that you know that he has, so that we may more fully identify him on the record?

A. Professor Melvin Copeland of Harvard Uni-
5030 versity.

Q. Who else?

A. Well, I have talked with my secretary, if that is of any significance, and she has helped me somewhat in preparing for this case.

Q. Anyone else?

A. I don't think of anybody else except if I may have incidentally talked this matter over with colleagues over the luncheon table, or something of that sort, but I can't remember specific cases. I only mention that so as to be entirely fair and admit the possibility that in occasional conversations these matters may have come up.

Q. Professor Copeland, in the conversations that you had with him concerning the matters which have been involved in your testimony here, told you during the course of those conversations that he had also discussed those matters with counsel for Respondents in this case; did he?

A. Yes. I was aware that he had done that.

Q. Well, didn't he tell you that he had?

A. Yes, I think he did.

Q. In fact, that was a part of the preparation that you made for your testimony in this case—is that correct?

A. Consultation with Professor Copeland?

Q. Yes.

A. Yes, I think that is correct.

Q. And how long have those conversations been
5031 going on?

A. Well, I have spent part of two days in consultation with Professor Copeland.

Q. What was the date of the first one?

A. I don't recall the date.

Q. What was the date of the first one? Was it a week ago or two months ago?

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A. I—my recollection isn't certain. I think it was—well, a month, two months ago. It seems to me it may have been in September.

Q. And you have had several since then with him?

A. I have had only one conference with him which—of extended length. I have had occasional conversations, incidental conversations, with him on the subject.

Q. Dr. Fairchild, do you agree with this statement:

"There is the constant effort of the captains of industry, when competition becomes especially keen and irksome, to find escape through some form of combination, making use of every possible device—pool, trust, holding company, and so on—which human ingenuity with millions at stake can devise"?

Mr. Stewart: Now, I object to that on the ground that the author of the document is not stated, first. Second, it is of no moment at all as to whether he agrees with that or not.

Trial Examiner Norwood: Objection overruled.

5032 Mr. Moore: May I have the question read, please,—

Trial Examiner Norwood: Yes.

Mr. Moore: —and, if you don't object, I would like to have the punctuation marks left out so I can understand the question.

Trial Examiner Norwood: Read the question without the punctuation marks.

(Question read.)

A. I agree with that statement, but a statement like that—almost any statement must be interpreted in connection with its context.

By Mr. MacIntyre:

Q. But you have made that statement, haven't you?

A. I recognize that as a statement of my own. It is part of a long discussion of the subject of a tendency toward combination in which, if I recall correctly, I have pointed out the forces leading toward combination and the other forces preventing combination, and this particular sentence comes among those forces which are tending towards combination.

I think if you will go on with that passage you will find the qualifying statements on the other side are of great significance, and the conclusion finally reached that the tendency toward combination and monopoly is not an inevitable tendency.

Mr. Stewart: I move to strike out the question and
5033 the answer on the ground that the question is unfair in form, it does not afford the other respondents the context; judging from the answer of the witness, the paragraph is lifted from its context, and I insist, if that is going to remain in it, that the book be put in. Frankly, I never heard of such a cross-examination. Now, you can contradict it if—

Trial Examiner Norwood: Motion denied. Counsel is privileged to put in the rest of the story if he wants to.

Mr. Stewart: Oh, no. No, sir.

Trial Examiner Norwood: It is within his—

Mr. Stewart: No. No. No.

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Dr. Fairchild, during the course of your testimony yesterday morning, I believe it was, you gave your definition of a market. Do you recall that testimony?

A. I think I do.

Q. Is it correct to include in the definition of a market distinctions as to a market's geographical concepts or a geographical concept concerning a market, structural concepts, and price-making concepts?

A. Well, a definition of "market," as I gave it, is the meeting place of the forces which lead to the exchange of products and determine price. Now, that, I think, is—

Q. That is the geographical concept; isn't it?

5034 A. Well, it is a meeting place. Now, that will have to be at some location, of course. Now, that, I think, is an adequate and a complete definition. If you want to add other features about the market such as you have mentioned, those would be descriptive facts and would be, I think, of the nature of description rather than definition. If you start on description, of course, you can go to any length in describing a market and you would soon find yourself under the necessity of distinquishing the different kinds of markets, because the distinction which would apply to a wheat market would not be entirely correct of the cement market, let us say, or some other product, but, in brief, the things you mention seem to me to be not essential to the definition but of the nature of description.

Q. It is your testimony that it is more important to economists, and that economists in general consider it more

important, to know where a market is than it is to know what kind of a market exists at any place?

A. I don't see how you can say that one is more important than another.

Q. It has been your testimony that economists in general consider that it is more important to know where a market is for example, in Philadelphia or in Richmond, than it is to know what the price-making properties in such markets are?

A. No. That is just what I didn't say. I said that
5035 I couldn't say in general which one of these various attributes of a market might be considered more important. I think the one essential thing about the market is the definition which I have given. Now, you go on to other matters, for certain purposes of analysis one thing might be important; for other purposes of analysis something else might be important. If you got into practical marketing problems, again, you would have various practical facts, some more important under some conditions, some under others. But I don't think it has very much bearing upon the definition of a market.

Q. Is it your testimony, as an economist, that it is of less value to know how prices are made in a market, when you are considering questions of price competition, than it is to know where the market is?

A. No; I have made no such statement. In fact, I just denied that in my previous answer to you. I denied the ability to tell you in general terms which of those various things are more important.

Q. Why didn't you—

A. I come back to the statement that the important essential thing is what I have given in the definition of a market.

Q. And you did not include in that definition of a market any discussion concerning price-making properties, but merely a statement that a market was a place where certain things took place; is that correct?

5036 A. I was only asked to give a definition. I wasn't asked to go into these other discussions.

Q. Well, do you consider that the definition that you gave is more important; that is, the definition as to where a market is, is more important in the consideration of matters concerning price competition than any definition

of a market as to price-making properties in a competitive market?

A. I should think my definition covered both of those things. As I said, it is the place where the price—I can quote your words—the price-making mechanism operates. That would be a pretty good paraphrase of my definition. Both of them are in there, and I didn't say that one is more important than the other. It would be impossible to say that.

Wasn't it Adam Smith who said it was useless to argue which blade of a pair of shears is more important in the cutting? You have got two things in your definition there, so far as I can see.

Q. Why didn't you discuss those problems of price-making properties in your definition of a market where we are here considering competition?

A. I wasn't asked to. I was asked to give a definition.

Q. So we would have there one blade of the shears; is that correct?

A. No. No. The two blades are—I am using your own approach to this thing. The two blades are the place
5037 and the price-fixing mechanism. Those are both in the definition. Those are the two blades.

Q. Do you consider, Professor Fairchild, as an economist, that supply and demand factors are important in the determination of market prices?

A. Yes, they certainly are. Of course, to avoid any misunderstanding I have got to remind you that we modern economists distinguish between conditions of pure competition and imperfect competition, as it is sometimes called, and that it is in conditions of pure competition that the old traditional mechanism of supply and demand pertains. In conditions of imperfect competition on the supply side we have to take account of a more complicated mechanism than the simple definition of supply, due to the fact that in so-called imperfect competition the action of the different competitors have reactions from their—in the action of their other competitors, and so we don't have quite that simple supply situation.

I could go into this at great length, of course.

Q. I don't believe it is necessary at this point. I would like to ask you another question which will give you further opportunity.

Now, considering this long hypothetical question A of Mr. Moore's, did that present to you a situation of imperfect competition instead of one of pure competition?

5038 A. Yes, I think that on the whole is a condition of what we economists call imperfect competition. I still ought to add a little, I think, to avoid any misunderstanding. When we say "imperfect competition" we have just adopted a technical term to describe a certain competitive condition. It doesn't mean that there is something faulty or wrong about this kind of competition.

Personally, I have always thought that wasn't a very good term to use. Some economists say "monopolistic competition" which, I think, is still worse. I don't think we have got a very happy definition, a very happy term.

Trial Examiner Norwood: Is it just something less in competitive force than the term "perfect competition"?

The Witness: No, that isn't the distinction. It is just a different kind of marketing situation. Some of the most vigorous, the fiercest competition occurs under conditions which we describe technically as imperfect competition. The automobile industry, for instance, is an industry operating under what we call imperfect competition. The competition there is very vigorous. The marketing of wheat off the farm is generally under what we describe as pure competition, and yet the ordinary wheat farmer finds himself in far less active and vigorous competition with other farmers than do the automobile manufacturers; so it isn't a question of the degree of competition. It is two kinds of com-

5039 petition operating under different conditions which can be very definitely described and set forth.

By Mr. MacIntyre:

Q. You have defined imperfect competition as one which includes a situation not necessarily excluding from it the element of collusion; haven't you?

A. Doesn't sound like any language I ever stated. I will be glad if you read it exactly.

Q. I show you page 44924 in Commission's Docket 3167, the case of the Cement Institute, and ask you if the first statement appearing on that page is a part of a statement made by you?

A. Here is the exact statement I made.

Q. Well, will you please answer the question that is pending?

5040 Mr. MacIntyre: I am asking the witness whether or not that is his statement. That is the pending question.

Trial Examiner Norwood: Is that right?

A. Your Honor, I would like to include in my answer the reading of five lines—four lines here because—

Trial Examiner Norwood: Now, that is all matter that is to come out later. If that party shows you your statement, you say whether it is or not, and further qualifications will all come out later.

Just answer one question at a time.

Mr. Moore: But, Mr. Examiner, I object to the 5041 form of the question. If he asks whether the sentence, if it is a sentence, is a part of or a sentence in the statement, very well, but to say that it is a statement when it is not a complete statement is unfair. I object to the question.

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. This passage of the first four lines at the top of page 44924 is a part of a rather long answer which I gave in testimony.

Mr. MacIntyre: Well, now, if Your Honor please—

Mr. Moore: Part of a long answer.

The Witness: Part of a long answer.

Mr. MacIntyre: If Your Honor please, I ask that that page be marked for identification, if you feel that it is necessary, since Respondents have asked it.

Trial Examiner Norwood: It isn't necessary to mark that because it has been particularly described and is identified by reference, and it is available to counsel. If they want to introduce more of the same record, it is all here.

Mr. Moore: Well, as I understand it, also we are not confined to one page.

Trial Examiner Norwood: No.

Mr. Moore: If the statement appears on other pages we have a right to use that.

Trial Examiner Norwood: Confined to that subject.

5042 Mr. Stewart: Of course, we don't know what the statement is. We don't know what it is yet.

Trial Examiner Norwood: Well, there is nothing to hurt you until he offers the statement into evidence.

By Mr. MacIntyre:

Q. The statement to which you have just made reference is also a part of the statement appearing from line 13 to the end of the previous page, that is, 44923; is it?

A. Yes. That particular answer begins there.

Q. Yes.

A. You will have to go back still further to get the complete discussion on that subject because there were various questions interpolated in my answer as I went along.

Q. But this answer that you have given here, and which you have just identified as yours, is as follows, isn't it:

"Take the requirements of imperfect competition, which are mainly three: First, the small number of competitors and the sufficiently large amount of product, so that each competitor has some effect on the price; second, the lack of homogeneous commodity, so that buyers have some preference as between the different—the products of different sellers; and, third, a considerable degree of ignorance or inertia on the part of buyers.

"Now, all three of those conditions do not have to be met to give us imperfect competition. The one that is
5043 most importart, most generally governs, is the large quantity of the product sold by a comparatively small number of sellers.

"Now, given that situation of imperfect competition, there might be some limited acts of collusion going on between competitors, which would still not deny the basic condition of imperfect competition."

That is your statement, isn't it?

A. Yes, that is.

(Discussion off the record.)

Q. I believe in one of your answers that you gave a few minutes ago you stated that this term "imperfect competition" such as you have used in that statement, and which you said characterized the industry, assumed to exist in hypothetical question A of Mr. Moore's, was unfortunate; that is, it probably shouldn't be used. Will you explain that answer?

A. Well, that goes right back to what I have already said. I didn't say that imperfect competition was unfortunate. I said that that—

Q. I am talking about the use of the term.

A. —that that particular term was unfortunate because it doesn't on its face properly describe the situation, and

then, in answer to what His Honor asked me a minute ago, I elaborated that by saying that the state of what we technically call imperfect competition is just not—is not
5044 just an imperfect modification of pure competition. It is an entirely different kind of competitive situation and—

Trial Examiner Norwood: It is competition operating in an imperfect field; is it?

The Witness: Well, that doesn't escape the difficulty because you have still got the word "imperfect" used in a technical sense, but I want to make perfectly clear that—in answer to this last question that the reason the term—the reason I said that I wished we had a better name for this kind of competition than "imperfect" is just because there is danger of misapprehension in the use of that word "imperfect" and—

By Mr. MacIntyre:

Q. Do you recall the statement that you just made to the effect that some economists have used the term "monopolistic competition" to describe the same situation that you have described as being imperfect?

A. Yes.

Q. Do you recall the date on which you first heard the term "imperfect competition" used to describe the condition outlined in Mr. Moore's hypothetical question A?

A. Well, of course, when I first heard the term "imperfect competition" used was long before I had heard anything about this case of rigid conduit manufacturers. I am not aware that I have ever heard the term "imper-
5045 fect competition" applied to the conditions in this industry until I used it myself in answer to your question so that it would fit into the situation.

Q. It is the first time you have heard it used as described in the industry, is that correct, when you used it here?

A. It just happens that I do not think I have heard it so, but there again I can't be sure that in conversation with other economists they might not have used the term "imperfect competition" to describe this condition. Certainly they would have used it many times to describe similar conditions in various industries. All I meant was that, so far as I recall it, it just does not happen to be the fact that those with whom I have discussed this industry have happened to use that particular term to describe the situation,

and that is not surprising, because this is a technical term used principally by economists in a technical sense.

Q. And a new term, comparatively speaking?

A. Well, if by "comparatively" you mean it does not go back to Adam Smith, yes, it is a new term. It has been in use for many years.

Q. Would you say for eight or ten years?

A. Oh, more than that.

Q. Wasn't the English writer Joan Robinson the first one who used it?

A. She was one of the first.

5046 Q. And that was about 1927 or '28, wasn't it?

A. I do not recall the exact date when she may have first used it. She has published a good many books dealing with the subject, and I can't recall from memory the dates—

Q. Well, it was about that time that it was first used to describe the condition you have used here to describe the condition in the rigid steel conduit industry?

A. I recall it was not used then with reference to the rigid steel conduit industry.

Q. No, but to describe a condition similar to the one which you have used to describe here.

A. Well, I can answer that question in a very approximate way that it was probably somewhere around that time, but I do not want to be recorded as stating that Miss Joan Robinson was the first one to use it, or that it was first used on any particular date of any publication of her books. It may have been used long before that. And I am quite certain that this particular condition of competitive industry was more or less recognized by economists some time before that.

Q. It was recognized by quite a number of economists back during 1921, from 1924, when the Commission was proceeding in its Docket 760, that is, the Pittsburgh Plus case, wasn't it? That is, the condition was recognized, but the term was not used to describe it at that time.

A. I am not familiar with the text of that docket,

5047 but I am certain that in 1921 a good many economists were using this term.

Q. And you can't fix the date when it was first used?

A. Not any closer than I have, no.

Q. The condition which it is used to described has been also described by economists as a condition of monopolistic competition as late as 1938, hasn't it?

A. I am not sure that economists do not use that term up to the present time. It has been used along with the other term. It is just as much, of course, a technical term. It does not imply that this kind of competition is monopoly. But they were looking for some other term to describe the form of competition that was not pure competition in the traditional sense, and they hit upon that term, as others have hit upon the term "imperfect competition." Both are technical terms describing—denoting a particular kind of competitive situation.

Q. Well, this term of "imperfect competition" as you have used it here, and which you say applies to the situation outlined in Mr. Moore's hypothetical question A, applies to that situation in part because of a situation like this, doesn't it: The basing-point price is named by rigid steel conduit sellers as of Pittsburgh, Pa.; to that basing-point price is added freight factors by the sellers in calculating and determining what their delivered price
5048 quotations shall be in any number of markets in and around and away from Pittsburgh, including such cities as Philadelphia, Baltimore, Washington, D. C., Richmond, Va.; is that correct?

Mr. Stewart: May we have that question again?

The Witness: It is a pretty long question. May I hear the first part of it?

Trial Examiner Norwood: Read the question.

(Record read as follows:

"Q. Well, this term of 'imperfect competition' as you have used it here, and which you say applies to the situation outlined in Mr. Moore's hypothetical question A, applies to that situation in part because of a situation like this,—")

The Witness: That is enough.

A. The answer is no.

By Mr. MacIntyre:

Q. In other words, the pricing conditions in the rigid steel conduit industry and supply and demand factors in the rigid steel conduit industry have had nothing whatever to do in causing you to apply the term "imperfect competition" to describe any condition in that industry; is that correct?

A. No, that is not correct, either.

I will tell you why I think this industry has imperfect competition.

Q. I would like you to answer the questions as I
5049 ask them, Doctor.

A. I have.

Q. Is it true, then, that you have used that term "imperfect competition" to describe the condition posed by Mr. Moore in his hypothetical question A because you do not consider that there is any direct relation between supply and demand factors and price making by operators in the industry?

A. No, that is not correct, either.

Q. Did you understand at the time that Mr. Moore put before you his hypothetical question A that operators, that is, manufacturers in the rigid steel conduit industry, made prices in the manner in which I have outlined to you here in one of my recent questions, that is, by naming a basing-point price as of Pittsburgh and adding to that certain freight factors in determining delivered price quotations at any given destination?

Mr. Moore: May we have the question read, please?

Trial Examiner Norwood: Read it.

Mr. Moore: I would like to know whether—it seems to me there are two references.

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Moore: Well, the question there, of course, is the point of time of any importance in the question. When I first put before him the question,—he is going back
5050 of that and asking him what his understanding is.

Mr. MacIntyre: Asking him what his understanding of the situation was as you posed it in that question. That is the question.

Trial Examiner Norwood: He may answer.

Answer the question.

Mr. Moore: That is not the question.

Mr. MacIntyre: That is the question now before the witness.

Trial Examiner Norwood: Answer the question.

A. I understand the question is, did I know these various things before I saw the statement of facts in the hypothetical question.

By Mr. MacIntyre:

Q. It is a question as to whether you understood that he posed such a situation as that in his question to you, the hypothetical question A.

Mr. Moore: When?

The Witness: You mean as to the interpretation of—

Trial Examiner Norwood: Did you understand those features were included in the assumptions?

The Witness: Well, this statement of hypothetical facts does include some at least of the statements which Mr. MacIntyre has mentioned.

Trial Examiner Norwood: Does it include all?

5051 The Witness: I would like to have it read again and check to be sure.

Trial Examiner Norwood: Do you want it read, or do you want to ask another question?

Mr. MacIntyre: I think it would be shorter to ask the question over.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Do you understand from Mr. Moore's hypothetical question A as he propounded it to you that there existed in the rigid steel conduit manufacturing industry the practice of quoting delivered prices which were determined by adding freight to the destination to a Pittsburgh basing-point price?

Mr. Stewart: I object to that question, on the ground that the hypothetical question speaks for itself. It is not for the witness to interpret it.

Mr. MacIntyre: Can't we find out what the witness understood by it?

Trial Examiner Norwood: Objection overruled.

Mr. Moore: Mr. Examiner, the question is incomplete because he does not say from what point freight is added.

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. Well, I understood from this hypothetical question that some of the prices in the rigid steel industry

5052 were determined in the way you have stated.

By Mr. MacIntyre:

Q. Can you find any—you have the hypothetical question before you, a copy of it—can you find in there any place where Mr. Moore assumed that the delivered price quotations in these published price sheets of rigid steel conduit manufacturers were determined in any other way than the one that you have just been talking about?

A. I think so.

Yes. On page 6, paragraph 13, there is the statement: "In the same year the manufacturer then producing conduit at Evanston, Illinois, inaugurated the practice of also quoting and selling conduit at delivered prices determined by adding freight from Evanston to the respective places of delivery."

That is different because it is Evanston and not Pittsburgh, as you asked me.

Trial Examiner Norwood: Off the record a minute.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Well, it was your understanding from the question as put to you by Mr. Moore, his hypothetical question A, that the delivered price quotations of the manufacturers of rigid steel conduit were made by taking a basing-
5053 point price at Pittsburgh or Evanston and Chicago and adding to such basing-point prices freight therefrom, or freight factors therefrom, to the destinations where the delivered price quotations were made; is that correct?

A. Yes, I think that is a proper paraphrasing of the language of the hypothetical statement.

Q. And did you also understand from the hypothesis as posed in that question that the basing-point price was the market price?

A. At what market?

Q. Well, you tell us whether you considered it the market price at any market.

A. Oh, yes.

Q. To which it could apply.

A. Oh, yes.

Q. Where?

A. Where it could apply.

Q. Well, would it be the market price in the territory where the Pittsburgh basing-point price plus freight made the lowest delivered price quotation?

A. It probably would be.

Q. Well, what is your opinion on it as to whether it is or is not?

A. Well, I thought you are asking me what my interpretation of this statement was.

5054 Q. Yes, your opinion of the situation, as you interpret the situation through the statement in hypothetical question A.

A. Wouldn't it be well if I referred to the statement?

Q. Yes.

A. Because this seems simply a paraphrasing of the statement.

Q. Yes.

A. I understood this statement to mean just what it says.

I think here is a statement which is in accordance with your question: "The quoted prices were based on Pittsburgh or Evanston"—

Q. What paragraph?

A. Page 6, the last three lines of the page.

Q. All right.

A. "The quoted prices were based on Pittsburgh or Evanston as the basing point, according as the one or the other would give the lower delivered price."

That seems to be very clear, and that is what I understand.

Q. Now, were those basing-point prices the market prices, in your opinion?

A. Yes. The quoted prices—that is the phrase used here—were the market prices at the various places to which they applied.

Q. Now, what is the market price? Is it the 5055 basing-point price or what?

A. Well, under the conditions stated here, it is the basing-point price, if you want to use that term.

Q. And so that plus the freight to any destination which would make a lower delivered price quotation than the basing-point price at some other location plus freight therefrom would be—

A. You mean something very different from a basing-point price. I thought you meant these quoted prices resulting from a basing-point system. Now, you mean—by "basing-point price" do you mean the price at Pittsburgh or Evanston?

Q. Well, they have been referred to there as basing-point prices. Are they, as you understood the situation, market prices?

A. If rigid conduit were being sold at Pittsburgh or Evanston, they would be the market prices at Pittsburgh and Evanston.

Q. And wherever that the delivered price quotation were made and determined by adding to that a freight factor from Pittsburgh it would also be, with those two factors put together, the market price at the destination to which it ran; is that correct?

A. Yes.

Q. In your understanding?

A. The sum of the basing-point prices, as you call
5056 them, at Pittsburgh plus the freight to destination would give—would be equal to the market price at that destination.

Q. So the basing-point price at Pittsburgh, assuming for the moment that the Pittsburgh basing-point price plus freight therefrom determines the delivered price quotation in Philadelphia, in New York, in Washington, D. C., and in Richmond, Va., the delivered price quotations at those locations made up by the Pittsburgh basing-point price plus freight therefrom would be the market prices; is that correct?

A. I am assuming your statement of fact as to these different cities, of which I am not informed, and assuming also that what you have described is simply the result of the basing-point method of pricing. On that assumption, these prices thus arrived at are the market prices in those various places.

Q. You have so treated them in all of the answers you have given to Mr. Moore concerning the basing-point system in the rigid steel conduit industry; is that correct?

A. Wherever I referred to the market price, I referred to the prevailing price in a particular market.

Q. Made up in that way?

A. No, not always made up just in that way. However made up, the price in that market is the prevailing price, and that is the market price.

Q. Well, do you know of any way that they were
5057 made up differently in the rigid steel conduit industry?

A. What I had in mind was there might be some place where some other base controlled.

Q. But I ask you to assume that in the four locations that I have just named that the Pittsburgh base price controlled, and ask you to state whether or not that if that is assumption is true, you treated therefore the delivered price quotations in those four places made up in

that way as the market prices in your answers to Mr. Moore. Did you?

A. Well, let me say that I would treat them so under the assumptions which you have made.

Q. Well, haven't you so treated market prices in your testimony here?

A. In my testimony I did not have the same assumptions as you have made as to particular places.

Q. Well, with that assumption, then, your testimony to Mr. Moore about what were the market prices, you would have told him, and you now tell me, that those will be the market prices; is that correct, in those locations?

A. I tell you that on the assumptions you have just made those would be the market prices in the places you have named.

Mr. MacIntyre: I think we better adjourn now.

Trial Examiner Norwood: Recess till 2 o'clock.

Mr. MacIntyre: Can we make that 2:15?

Trial Examiner Norwood: 2:15.

(At 12:20 p. m., a recess was taken until 2:15 p. m.)

5058 Afternoon Session.

Trial Examiner Norwood: Hearing come to order. Professor Fairchild, resume the stand.

FRED ROGERS FAIRCHILD resumed the stand and testified further as follows:

Cross-Examination (Continued.)

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Dr. Fairchild, we were talking just before the lunch hour about base prices and basing-point prices and how they were used in making up delivered price quotations. Now, I will ask you this question: In your answers to the questions which have been put to you by Mr. Moore, have you considered and treated base prices at Pittsburgh as market prices there?

A. Unless I knew something to the contrary, I would

assume that the base price at Pittsburgh would be the market price at Pittsburgh; yes.

Q. Well, you did so assume in your answers to his questions; is that correct?

A. Why, not necessarily so. I ordinarily would think it would be so.

Q. When you think as Pittsburgh as being one of the destinations which were referred to in your answers in which you mentioned destinations, would you then be
5059 speaking of the base prices at Pittsburgh as market prices?

A. Yes. I—the only reason I qualified that is that I am aware that sometimes prices are announced, not publicly, but are generally known, which may cut under the announced published price, and in those cases those might come to be the market prices either at—either at the base point or at the other points of delivery. Otherwise, I should answer as I did, that the base price would be the market price at the base.

Q. Well, you had that in mind when you were answering questions as to how the business in the rigid steel conduit industry, in your opinion as an economist, were carried on when the basing-point system was used; is that correct?

A. Yes; and I didn't undertake every time to mention this possible exception of the case.

Q. In your opinion as an economist, what forces would determine the market prices at Pittsburgh?

A. Well, they would be the forces of demand in Pittsburgh and in these other places where conduit is being delivered because those prices are all tied up together, and also the conditions of supply, or what corresponds to supply in this kind of industry, including costs and all that.

Q. Assume—

Mr. Robison: May I ask the witness one question at that point, Mr. Examiner?

5060 Trial Examiner Norwood: With the counsel's permission.

Mr. Robison: It is simply to straighten out what I take it is a slip of the tongue.

Mr. MacIntyre: Well, may we go off the record, then, and straighten that out?

(Discussion off the record.)

Trial Examiner Norwood: Back on the record.

By Mr. MacIntyre:

Q. Well, assume, Doctor, that the demand in a portion of the Pittsburgh basing territory, for example Philadelphia, is declining as of today, but it isn't declining in Pittsburgh—that is, the demand for conduit—but that is not declining in Pittsburgh in the same way that it is declining in Philadelphia, or possibly not at all. Is it your testimony, as an economist, that the demand in Philadelphia under such circumstances would be responsible for the determination of the base price which you have there determined to be the market price in Philadelphia—I mean in Pittsburgh?

A. In Pittsburgh. Why, in determining their price policy I would expect producers under—in this kind of an industry to take account—

Mr. MacIntyre: Now, just a moment, Doctor. Let us go back to the question.

Let us have the question, and I would like to get 5061 an answer to the question.

Trial Examiner Norwood: Read the question.

(Question read.)

A. Well, I am testifying now in answer to that question, that the industry will take account of demand at all the various points—

By Mr. MacIntyre:

Q. Now, just a moment.

Trial Examiner Norwood: If you will just answer his question directly, Doctor, we will get along much faster.

Mr. MacIntyre: I don't want him to tell us here what he considers that the industry might do, but I am asking him what he, as an economist, would say if the force in Philadelphia determines that market price in Pittsburgh under such circumstances as I have outlined; assuming those and nothing else.

Trial Examiner Norwood: Answer that. Explain it later.

A. Put it this way: That the demand conditions in Philadelphia are a part of the conditions which determine price, but only a part.

By Mr. MacIntyre:

Q. And why is the demand conditions in Philadelphia a part of the circumstances which determine the price in

Pittsburgh, if what you have told Mr. Moore on direct examination is true, that each of these destinations
5062 is a separate market, independent of each other?

A. Well, the explanation of that is that even though they are separate markets—I didn't say they were independent of each other. I said they were separate markets. Even though they are separate markets, the prices are related to each other in these different markets.

Q. Is it your testimony now, as an economist, that the price in one market controls the price in an entirely different market?

A. Not quite that. You asked me about the forces.

Q. Well, now, I am asking you whether or not that is your testimony.

The Witness: Well, will you repeat that?

Mr. MacIntyre: Read the question.

(Question read.)

A. In one sense that is a part of the basing-point system. The price at the base point controls—

Trial Examiner Norwood: Wait a minute.

A. —the price—

By Mr. MacIntyre:

Q. We are not talking about the basing-point system. We are talking about economic theory, and I want the Doctor to answer my question from the standpoint of economic theory, aside and apart from the basing-point system, because I didn't bring the basing-point system
5063 in that question.

Trial Examiner Norwood: I would appreciate it if you will suppress the natural desire to explain and give the direct answer, and we will permit you to explain it later. We will get along faster that way. He has a right to direct answers here on cross-examination.

The Witness: Well, I am trying to be responsive to that question in saying, when he asks me if the price in one market can affect or control the price in another market, it is obvious that the price at the base point does have an effect on the price at the other delivery points.

Now, there is also an effect the other way; not the effect of the price but of the demand conditions.

By Mr. McIntyre:

Q. Doctor, I am asking you again to state, as a matter of economic theory, whether or not that it is your testimony here as an economist that the price in one market, separate and apart from all other markets, is determined by the price in those other separate markets?

A. I don't say that.

Q. Is it controlled by them?

A. The same question; isn't it?

Mr. Robison: The same question.

Mr. MacIntyre: I said "determined" in one instance and now I am saying "controlled".

5064 A. It seems to mean the same to me. The answer would be the same.

By Mr. MacIntyre:

Q. To you it would be the same. Then, for price-making purposes—that is, taking your last answer—would you say that these destinations should not be considered as separate markets?

A. They should be considered as separate markets but not as unrelated markets.

Q. In other words, they should be considered as separate destinations at which conduit is used; is that what you mean to say?

Mr. Robison: Rigid conduit.

A. I made that—

Mr. MacIntyre: If the counsel will just let the witness answer, I will appreciate it.

Trial Examiner Norwood: Yes. Answer.

Read the question.

(Question read.)

A. And what does "they" refer to? I have lost the connection there.

By Mr. MacIntyre:

Q. These separate destinations.

A. Oh, yes.

Q. That is what you have meant to testify to?

5065 A. Yes. The answer is yes.

Q. But you now do not intend to have any of your testimony here taken as indicating that you believe, as an economist, that they are separate and unrelated markets; is that correct?

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A. No, it is not, because I have said they are separate, but not unrelated.

Q. That is what I say. You do not intend to have any of your testimony taken here to mean that they are separate and unrelated markets; is that correct?

A. You have got two adjectives. My answer is "no" to one and "yes" to the other.

Trial Examiner Norwood: Well, if you can exclude either one of them, your answer is "no" to the entire question.

By Mr. MacIntyre:

Q. Well, Doctor, if these different destinations are considered by you as different markets, but related in price—I mean related to each other in connection with their price-making properties, how can they be separated with respect to questions involving price competition?

A. Well, when I say they are separate markets I mean no more than that, that each one is its market. That is true because the demand conditions are different in these different markets, and the fact that they are also related to each other in pricing mechanism does not deny 5066 that they are separate markets.

Q. Is it your testimony, as an economist, that you should consider one entirely aside and separate from the others in discussing matters of price competition even though they do relate to each other in matters of price making?

A. I do not quite know what you mean by "I should".

Q. As a matter of rationalism on the part of an economist.

The Witness: Now, may I have that question?

(Question read.)

A. No. If I understand that question, rational thinking by an economist would not consider these markets each one entirely unrelated to the others in considering the question of price mechanism.

By Mr. MacIntyre:

Q. Or the question of price competition; is that correct?

A. Yes, remembering my very careful definition of price competition.

Q. Well, now, you gave us the definition of price competition yesterday afternoon. I want to show you another

definition of price competition which you have given here (handing a docket to the witness).

A. (After examining the docket) Is there a question about this?

Q. No. I am asking you just to look at that time for the time being.

5067 A. Yes, I recognize this as part of my testimony in another case.

May I see this?

(After examining the docket further) Yes, I recognize that.

Q. You have then stated that all competition involves the matter of price—

Mr. Stewart: Where is this?

Q. —and that in that sense, the only fundamental sense, all competition is price competition.

A. Yes.

Trial Examiner Norwood: Where did that appear, Mr. MacIntyre, for the record?

Mr. MacIntyre: That is at page 44733 in Federal Trade Commission Docket 3167.

Trial Examiner Norwood: What is that, the Cement case?

Mr. MacIntyre: Yes.

By Mr. MacIntyre:

Q. Under the definition, Doctor, if more sellers of a commodity agreed upon the monetary sum that they would quote in their efforts to sell—that is, would quote to various buyers in their efforts to sell their commodity, but did not agree upon discounts that they were to give from that, or, for that matter, various little services that

5068 they might add in, and strictly adhered to their agreement as to the monetary sum that they were to charge, would there still be price competition?

A. There would be a certain amount of competition, but your hypothesis states that there is agreement. That agreement has limited the field of competition.

Q. But they only agreed upon the monetary sum that they were to receive; that they did not agree upon discounts that they were to take from that, or for that mater, any services that they would render in connection with making their sales. Is there still price competition?

A. In the narrow sense of price competition, which I

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was careful to state yesterday, that is what would be called quality competition rather than price competition.

Q. But according to the definition that you gave in this Docket 3167 at page 44733, it would still be price competition.

A. Yes, because there I was pointing out that even though prices are not changed, as long as there are questions of quality, which are in competition, price cannot be removed from the consideration of buyers and sellers, and in that broad sense all competition is price competition. That is the way in which I ended my testimony in the Cement case after making all these same careful distinctions that I made yesterday.

5069 Q. And so with your use of that broad concept of price competition, there could be no agreement touching price which would eliminate price competition, could there?

A. Well, you are talking now about agreement. I was talking about competition in which—you remember my language—in which price was not fixed by agreement, but just that competitors for the time being were not offering different prices from those that prevailed.

Now, when you give me a question in which the hypothesis there is agreement, then, of course, to the extent of that agreement there is no competition.

Trial Examiner Norwood: Well, suppose there is an agreement as to the sum to be paid, but no agreement as to the discounts, would there be any price competition?

The Witness: Discounts I would interpret as part of price; then there would be price competition.

By Mr. MacIntyre:

Q. Even though they had agreed upon the monetary amount that they were to receive for the goods; is that correct?

A. Well, that was contradicted by the assumption that they were left free to make discounts.

Q. They were left free to make discounts from the price that they had agreed upon. There would still be price competition; is that correct?

A. Oh, yes.

5070 Q. And would there be any substantial, in your opinion as an economist—any substantial restraint on price competition as a result of that agreement?

A. If they were permitted to make discounts freely, I should think that agreement would not have much effect.

Q. That is, there would be no restraint upon price competition?

A. There would be comparatively little restraint.

Q. That would be true in varying degrees as to whether they agreed upon discounts from any price that they were to quote and agreed upon the services that they were to render in connection with the sale, but did not agree upon the monetary sums that were to be quoted, according to your thought; is that correct?

The Witness: I did not—could you repeat that?

Trial Examiner Norwood: Read that.

(Question read.)

Trial Examiner Norwood: Do you understand it?

The Witness: Let me see if I do.

I take it now that they have agreed on the discounts and agreed on their qualities, but left themselves free to set any published price from which to make their discounts. Well, it seems to me that leaves them pretty free in the matter of pricing.

By Mr. MacIntyre:

5071 Q. In other words, there is no restraint upon price competition there?

A. I would not say there is no restraint, but there is not very much restraint.

Q. You would still say that there is competition there, just as you have told Mr. Moore on direct examination that competition exists in the rigid steel conduit industry which he had described to you; is that correct?

A. Well, I don't know as I would say in one as in the other; I would say in both cases there is competition.

Q. In other words, without distinguishing which would be the greater; is that correct?

A. Which particular two are you comparing?

Q. Competition in either one of those situations, the one he posed and the one I posed. Without distinction, you would say that competition would exist in both?

A. Well, I do not recall any specific instance which he posed. That is what is troubling me.

Q. Well, do you recall his hypothetical question A?

A. Oh, yes.

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Q. You said that that presented to your mind a state of competition.

A. Oh, yes.

Q. Now, I posed a situation here, and you say that that is a state of competition, and you do not see any
5072 need for any distinction between the types of competition which you say exist in either one or both of those situations.

A. Well, I see ground for a good deal of distinction between the description of the conduit industry in the hypothetical statement and these suppositions you have put forth. All I said was that under both conditions there is competition.

Q. But when you merely said that there was competition in those two instances that in itself did not tell the whole story that was behind your thought as to what was in existence there, did it? That is, one could be different from the other, and according to your thought there would still be competition?

A. Yes. That is what I tried to say a moment ago. You have given me not one supposition, but two or three in the last few minutes, and set over against them the assumed facts in the hypothetical statement of Respondents' counsel, and I am able to distinguish quite a lot of differences between these different cases, but in all cases I find that competition would exist.

Q. You would simply describe them in each instance as being competitive.

A. In answer to the question of yours, I would.

Q. Yes.

Now, several times yesterday you told Mr. Moore that the condition outlined in his hypothetical question A
5073 could have arisen and could be maintained, in your opinion, without collusion or monopoly. You also told him that the situation thus posed, in your opinion, was consistent with competition.

Now, I am asking you to add to all of the assumptions that he had in hypothetical question A this assumption, that collusion is found from available evidence to be a device by which rigid steel conduit manufacturers and their agents have, among other things, used in their maintenance of their basing-point method.

Now, with that additional assumption, would you have to change your answers which you gave to Mr. Moore?

A. I would not change it simply on the assumption that there has been some occasional acts of collusion here and there. If the prevailing situation is as there described and is still a competitive condition, occasional acts of collusion would not change the general character of it.

Q. Well, according to your—

Trial Examiner Norwood: Didn't your question there assume non-collusion?

Mr. Robison: Are you addressing me, sir?

Trial Examiner Norwood: Yes.

Mr. MacIntyre: If your Honor please, I think we had that clear yesterday that it did assume a condition of competition, the opposite of monopoly or collusion.

5074 Trial Examiner Norwood: The fact is the assumptions he laid down there contained a statement that there was no collusion.

Mr. Robison: I think not specifically. I think there was no such specific statement.

Mr. MacIntyre: Well, that was made clear by Mr. Moore on the record in response to a question by me that he was asking all of those questions upon the assumption that there was competition and it went to a condition of competition.

Trial Examiner Norwood: All right. Go ahead.

Mr. MacIntyre: Now, I will ask the witness to assume a state of collusion and ask him if he had found that collusion had been—that is, ask him to assume that collusion had been found to be a device by which rigid steel conduit manufacturers have maintained their basing-point method, would he then change his answers which he gave to Mr. Moore in response to his hypothetical question A.

The Witness: Well, if you ask me to assume that this pricing method has been brought about by collusion, then I can't say that it has been brought about by competition.

By Mr. MacIntyre:

Q. Just simply take my assumption and do not ask me if I assume something you would say something else; but take my assumption as it is now stated on the record

5075 there and answer the question.

Mr. MacIntyre: Please read it.

Mr. Stewart: I submit that the question is not clear. I do not understand what—

Trial Examiner Norwood: Read the question.

Mr. Stewart: Collusion as to what?

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Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Now, objection is overruled.

Mr. Stewart: Well, now, just a moment. What answer is it? He made many answers.

Trial Examiner Norwood: Objection overruled. I think it is perfectly clear. You can clarify it.

Mr. Stewart: You mean all of them?

Mr. MacIntyre: Oh, all of them.

Trial Examiner Norwood: Did he answer?

Mr. MacIntyre: Where he said that the condition presented to him competition and it could be maintained without collusion.

Trial Examiner Norwood: Well, you mean also answers based upon the hypothetical statement; do you not?

Mr. MacIntyre: Yes. Yes.

The Witness: Well, I should say, as I think I already have, that occasional acts of collusion in connection
5076 with an industry which—

Trial Examiner Norwood: I think, Doctor, that you might answer that question directly. You have distinguished there about occasional acts, but suppose you find that that was maintained by collusion. That is what he asked. Would your estimate still be that that was a competitive set-up?

Mr. Robison: Mr. Examiner, as I understand it, his question is addressed to perhaps some ten or a dozen answers which the witness made to distinct questions, each of which had reference to the statement of facts in hypothetical question A.

Trial Examiner Norwood: I was confining it to the one.

Mr. Robison: To ask the witness to make a categorical answer to one question which has reference to ten or a dozen prior questions is not fair.

Mr. Stewart: That is the point I was making, Mr. Examiner.

Trial Examiner Norwood: I will ask you to make a categorical answer to that question as I have limited it.

The Witness: Well, I am—I am—

Trial Examiner Norwood: Would it present a competitive set-up?

The Witness: I am troubled by just this difficulty: I don't know which of these various answers that I have
5077 made is now being brought into the question.

Trial Examiner Norwood: Jnst answer my question.

The Witness: Well, can I hear your question?

Trial Examiner Norwood: Suppose you should find that this system as set up and as described in the hypothetical question A were maintained and brought about by understandings agreements, and collusion; would you then conclude that that described a competitive condition?

The Witness: To the extent that it was brought about by collusion and combination, it would not be a competitive system.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. In response to this hypothetical question A of Mr. Moore, you stated to him that that presented a situation to you which could arise and be maintained without collusion. I am asking you now that if you were to assume, in addition to those assumptions of his, that collusion is found to be a device by which rigid steel conduit manufacturers have maintained their basing-point system, would you change your answer to his question?

A. If you now add the hypothesis that there has been collusion, of course I couldn't say that that has been maintained without collusion. That would deny the hypothesis.

Q. If you had other information in that direction 5078 you necessarily would not have answered the questions of his in the way that you did; is that correct?

A. Let me specify. If he had given me a set of hypothetical statements one of which was that there has been collusion and then asked me if that condition could have been brought about without collusion, then, of course, I would have had to say "No."

Q. Now, I am going to ask you, Doctor, have you examined and studied the exhibits which have been received in this case as Commission's exhibits?

A. No, I have not.

Q. Have you examined the testimony of the witnesses called by the Commission and which they gave on their direct examination?

A. I have examined the testimony of Professor Nourse. In fact, I have read that carefully.

Q. I am talking about those that were called as representatives of the manufacturing plants who testified as to the facts.

A. No, I have not examined that testimony.

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Q. Have you examined any testimony in this case other than Dr. Nourse?

A. No, I think not.

Q. Other than that of Dr. Nourse.

Doctor, does the fact that one acts in his self-interest
5079 exclude the fact that he is acting also in the interest of others when their interest is compatable with his?

A. One might act in his own interest and at the same time be acting in the interest of others. That is why in my definition of "competition" I say that—I make both statements, that the seller is acting independently in his own interest and without reference to the interest of other sellers.

Q. But when he acts in his self-interest, if the interest of the other sellers is compatible with his, he is acting in their interest also; is that correct?

A. No. I would say that if a competitor acts independdently in his own interest without reference to the interest of other competitors, it might happen by mere coincidence that actions he took were agreeable to the other competitors, that would not prevent his being in competition so long as he didn't intentionally produce that result.

Q. But I am not asking you about intents now. I am asking you whether or not he would also be acting in their interest under that assumed set of facts.

A. I don't call that acting in another person's interest if you are acting entirely in your own and without any reference to the interest of the other person, even though your acts may by accident prove to be agreeable to the other person. I wouldn't say that that was acting in the
5080 interest of the other person.

Q. You can't conceive under the hypothesis put to you by Mr. Moore in his hypothetical A that when rigid steel conduit manufacturers were acting in their self-interest, that if the interest of the other conduit manufacturers happened to be the same, they were acting in the interest of the others only by accident?

Mr. Robison: Well, now, is that the question? I object to the question, Mr. Examiner.

Mr. MacIntyre: Let me complete the question. May I complete the question?

Mr. Robison: Certainly. I thought you had.

Mr. MacIntyre: Read what I have there.

(Question read.)

By Mr. MacIntyre:

Q. Is that what you mean?

Mr. Robison: Well, I object to the question, Mr. Examiner, on the ground that there is nothing in the statement of facts that the witness was asked to assume in hypothetical question A about sellers acting only in their own interest.

Mr. MacIntyre: Oh, we had self-interest through this examination of this man from the first hour he was on the stand to the last.

Mr. Robison: Not in any of those hypothetical 5081 questions.

Trial Examiner Norwood: Read it again.

Mr. MacIntyre: Well, in his answers to it.

Trial Examiner Norwood: Wait a minute.

Off the record until he reads it.

(Question read.)

Mr. Stewart: The real objection to the question is that it assumes that they all act together for themselves, so that it is obvious.

Trial Examiner Norwood: Objection overruled. I think that the Doctor may comment on that.

A. I can conceive all kinds of possibilities here. The questions asked me were whether I could assume from the hypothetical statements given to me that competition could not have been present or that these results could not have developed from competition. Now, of course, I might assume that certain results could have developed from a combination or monopoly, but that wasn't the point on which I testified. I testified that all of these results could perfectly well have arisen from natural economic forces in a state of competition.

Now, I don't know the facts as to—other than what is in this hypothetical statement, and from that statement I simply infer that it is not necessary to assume collusion or combination. I hope that is responsive. I am 5082 really trying hard to make it so.

By Mr. MacIntyre:

Q. Well, do you consider that it could act only—that they could have so acted in each other's interests when acting in their self-interest only by accident?

A. No. I wasn't asked to consider whether they had acted in the interest of each other. All I was asked was

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whether these results could have come without their acting in each other's interest by combination and collusion, and I can infer that. I can infer that these results were possible without collusion or combination. I can't infer that there never was any collusion or combination.

Q. Well, Doctor—

Trial Examiner Norwood: Well, you think the various results were from the operation of economic law but that the identity was accidental?

The Witness: Well, I wasn't asked even to say that these results were the—that these results came from economic law; but I was asked whether they could have come from economic law naturally without collusion or combination, and that—it seems to me that is perfectly clear.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Doctor, on page 4949, beginning at line 12, you were asked this question:

5083 "Would you as an economist infer from such identity or uniformity in public bidding the existence of an agreement and understanding or other form of collusive activity among conduit sellers in making prices?"

Your answer is to the effect:

"No, I would not. It seems to me that the separate manufacturers would normally be inclined to make a bid at the prevailing price and that each one would arrive at that decision independently in his own interest, * * *"

Now, when he so acted he would be acting not only in his own interest but in the interest of the other bidders; would he?

A. Well, that is an exact illustration of what I undertook to explain a moment ago. I said that it would be possible for that result to come from each one acting in his own interest and without reference to the interest of others. Now, if it happens that his action is also agreeable to the others, I would not say that he was acting in their interest. I would simply say that he was taking action in his own interest—

Q. And which was in their interest, too?

A. —which turned out to them to be advantageous also. After all, I have no way of knowing as to that fact.

Q. If he knew that they would be quoting the same price

as he, if they used the basing-point system, and he went ahead and used it in his own interest, he would be
5084 acting in not only his own interest but in theirs also, wouldn't he?

A. Not as I used that term. In fact, it is the very fact that he knows they are likely to make this same bid that he decides to make it himself in his own interest.

Trial Examiner Norwood: Would he be acting in his own interest without regard to his competitor, unrelated to the others?

The Witness: No.

Trial Examiner Norwood: If he used this system knowing he would get the same results.

The Witness: He is not acting without regard to his competitors. He is acting without regard to the interest of his competitors. He is acting in his own interest without regard to the others.

By Mr. MacIntyre:

Q. But it results to their beneficial interest when he so acts?

A. That is a matter of fact. As a matter of theory—

Q. But when he cuts the price and bids the same as they, then the beneficial results is the same to them as it is to him; is that correct?

A. I don't know whether it is or not to them. He has decided from his own point of view that it is to his advantage not to bid a different price.

Q. Isn't it also to their advantage that he not
5085 cut the price, Doctor?

A. Not necessarily, on those hypotheses. For instance, they might be very glad to have somebody initiate a price change.

Q. Let us take the other side of the picture. Is he acting in the interest of the consumer of the conduit there by not cutting the price?

A. That is not the interest that he is thinking of. He is thinking of his own interest.

Q. Which is closer to his interest, those of the other bidders or the interest of the buyer?

A. Well, there is—

Mr. Robison: I object to that, Mr. Examiner, on the ground that it calls for pure speculation without any basis on which to speculate.

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Mr. MacIntyre: Can't we have five minutes' speculation after a day and a half?

Mr. Stewart: He is talking about morality now.

Trial Examiner Norwood: He is on cross-examination now, and he is within the range of cross-examination.

Mr. Stewart: You mean on moral issues? That is as to what this is as to.

Trial Examiner Norwood: I heard that this morning on the other side.

Mr. Stewart: That was over on that side.

5086 Trial Examiner Norwood: Objection overruled.

Mr. Stewart: I did not know we were the keeper of the morals here.

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: May we read the question?

Trial Examiner Norwood: Read it.

(Question read.)

A. His own interest doesn't regard the interest of the other sellers at all.

Now, I can conceive that a seller might have a good deal of interest in the well being of his customers and might take action in his own interest because it was of interest to his customers and in the long run would rebound to his advantage. I can conceive of that, but I don't conceive of a competitor, so long as he is taking action in his own interest, as I used the term, acting also in the interest of his other competitors.

By Mr. MacIntyre:

Q. Well, Doctor, let us forget motives and intents for a moment and speak about results, and, thinking of this question from that end, please answer: If a seller of rigid steel conduit decides that it is to his own self-interest to quote $2 as a unit price, which is the same price he believes his competitors are going to quote, and he decides to quote that and not to cut it, is his act in so quot-

5087 ing as a result more closely in the direction of the interests of not only himself but his competitors than it is to the interest of the person to whom he submitted the bid?

A. In the first place, I don't—

Mr. Stewart: Let us read that question.

A. —I don't know how to make those comparisons. You

haven't got a common yardstick to measure those two things, and, in the second place, I can't answer it because I don't know what is the interest of his competitors.

Q. How could you on direct examination so often iterate and reiterate that the action of these people were to the advantage of buyers rather than to do something else which might lead to their disadvantage, if you do not know what is to their advantage and what is against their interest?

A. Well, what I said just now was that I didn't know what was to the interest of this other competitor. Now, you are asking me about things that were to the advantage of the buyer, and in every such question, as I recall, put to me there was a hypothetical statement of the buyer's condition and I was able to say that under those conditions such and such action would be or would not be advantageous to buyers.

Q. Well, take the hypothesis that I have just put to you about the bidding and add this one assumed fact to it: That it is to the interest of the buyer to get as low a price as possible lower than the $2 if he can get it.

5088 Mr. Stewart: Well, now, I ask then what is the question?

Trial Examiner Norwood: Read the question.

By Mr. MacIntyre:

Q. Take the other assumptions and add that to it.

(Question read.)

Trial Examiner Norwood: Read the previous question.

Mr. MacIntyre: Well, off the record.

(Discussion off the record.)

Trial Examiner Norwood: Back on the record.

By Mr. MacIntyre:

Q. Assume, Doctor, that seller A decides to quote a unit price of $2 which, he believes, will be the price quoted by his competitors, if they quote as he thinks they will; and that he and they quote the $2 price, and that it is to the buyer's interest that he secure from those sellers a price lower than $2 if he can get it.

Now, has seller A in acting in that way acted more to his interest and to the interest of his competing sellers than he has to the interest of the buyer?

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A. Well, I think you can always assume the hypothesis that buyers would like to get their prices as low as possible, and it is no part of the definition of competition that sellers put their prices lower than to their own advantage in order to meet the wishes or desires of
5089 buyers. So that—well, that is about the answe , I think.

Q. Now, will you please answer the question?

Mr. MacIntyre: Read the question to the witness.

Mr. Robison: I submit the witness has answered it.

Mr. MacIntyre: I submit that he has not.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. MacIntyre: He can answer that "yes" or "no".

Trial Examiner Norwood: You are asked to balance up this fellow's own self-interest and that of his competitors. Tie that with it, and has he regarded that side more than he did the interest of the buyer?

Mr. Stewart: That means a matter of economics, then.

Trial Examiner Norwood: Yes.

The Witness: I don't know enough about the—

Trial Examiner Norwood: You can answer that "yes" or "no".

The Witness: I can't quite, I am sorry, Your Honor. I can say that—

Trial Examiner Norwood: If you find the preponderance on the one side you state that, or if you find the preponderance on the other you can tell us the facts.

The Witness: Well, you see, I don't know what is the interest of these other sellers. I—

5090 Trial Examiner Norwood: You can't answer that?

The Witness: No,—

Trial Examiner Norwood: Well, that is the answer.

The Witness: —without more hypothesis there.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Well, assume this as an additional fact to this hypothesis: That it is to the interest of this seller A or others to get $2 or more if they can.

Trial Examiner Norwood: Does that make it any more—

The Witness: That helps some.

A. Now, your seller in setting a $2 price has set a price

that is probably, according to your hypothesis, agreeable to other sellers, and, according to your hypothesis, it is not agreeable to buyers because they want a lower price.

By Mr. MacIntyre:

Q. And when seller A acts in setting that price of $2 in his bid, then has he acted more in his interest than in the interest of the other sellers than he has the buyer? Will you please answer it?

A. Yes. It comes back to my use of the term "his interest." He has acted in his own interest. He hasn't acted in the interest of the other sellers or of the buyers.

Trial Examiner Norwood: You are asked to define
5091 those interests strictly where the preponderance lies, so it is not conferred upon to make the explanation at all.

The Witness: But the counsel's last question was exactly what I answered. He said was the bidder acting in the interest of the other sellers or the buyers? I said that he was not acting in the interest of either of those; he was acting in his own interest.

Trial Examiner Norwood: From that standpoint, isn't the interest of the buyers and sellers always opposed to each other? Aren't they at arm's length?

The Witness: There is a conflict always between buyers and sellers. That doesn't mean their relations are always in conflict, but there is that conflict that, everything else being equal, the higher the price the greater the advantage to the seller; the lower the price the greater the advantage to the buyer.

By Mr. MacIntyre:

Q. Doctor, I am calling your attention to an answer that you gave beginning at line 8, page 4958. It is in answer to this question: From your observations of business behavior, if a conduit seller generally refrained from quoting f.o.b. its place of production or shipment prices that were independent of and unrelated to, delivered price quotations determined from a basing-point formula, to what would you, as an economist, contribute that refusal?" Your answer:

5092 "In my opinion, if the manufacturer quoted f.o.b. prices which were unrelated to delivered prices resulting from a basing-point system, he might quote uniform f.o.b. mill prices."

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And you later stated that you could not conceive of any alternative from the basing-point system except uniform f.o.b. mill prices. Do you recall the latter?

The Witness: Yes, but I beg your pardon. I didn't say quite that. I said I couldn't conceive any system of f.o.b. prices unrelated to delivered prices which would be practicable, except the uniform f.o.b. price. I didn't say that I couldn't think of any f.o.b. price existing excepting the uniform f.o.b. price, because the question as put to me limited it to an f.o.b. price system related to the basing-point system.

Q. Yes. Now, thinking of this last answer that you have just given, and the answer you gave on page 4958, line 8, about the seller probably returning to a uniform f.o.b. mill price, how would he turn to an f.o.b. mill price? What would lead him to it? What would cause him to go to it?

A. Wasn't the hypothesis in that question that he was forbidden to use the basing-point method?

Q. No.

A. I forget.

Q. No.

5093 A. How was the question framed?

Mr. MacIntyre: Off the record a minute.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Back on the record.

(Last question read.)

A. Well, I don't think he would go to it voluntarily unless there was some restraint placed upon his action such as a prohibition of the use of the basing-point system, or in case of agreement or collusion.

By Mr. MacIntyre:

Q. Well, assume—

A. There might be agreement among sellers to go onto a uniform base system, but without agreement or without compulsion I wouldn't think that the seller would make this change.

Q. Assume that sellers are prohibited from using the basing-point system of quoting prices; then if sellers used —that is, in rigid steel conduit—used the uniform f.o.b. mill base system, about which you have just been talking, how would they go to it? What would cause them to use this latter?

A. Well, the prohibition of using the former method and

this latter being about the only practicable method to which they might turn.

Q. In other words, it is your testimony that they
5094 could not turn to anything else?

A. I wouldn't go so far as to say that there can't be any other plan to which they could turn, but I am not aware of any that would be practicable.

Q. You consider that it would be the natural thing for them to do to turn to that?

A. Well, there again—there again I don't pretend to be sufficiently conversant with the facts of this industry to know as to whether some other method might be practicable, but if they turned to any sort of f.o.b. system, I think it would be the uniform f.o.b. system or one related to delivered prices, and if that is forbidden then about all you have left is the f.o.b.—uniform f.o.b. basis.

Q. Well, assuming that they are just prohibited from using the basing-point system, and you say that they would then turn to the uniform f.o.b. mill system, what—

Mr. Robison: No.

A. I haven't said that.

Q. —what would cause them to use that system instead of something else?

Mr. Robison: I object on the ground that the question assumes and states that the witness has said something that he has not said.

Mr. MacIntyre: Well, I will amend the question by saying:

5095 By Mr. MacIntyre:

Q. What would make it impracticable for them to use any other system but the f.o.b. mill system, as you have stated?

Mr. Robison: Well, now, the witness brought into the answer, to which I assume counsel is referring, the proposition that the seller was prohibited from making prices unrelated to delivered prices. Now, that element is entirely omitted from the question that is now being asked.

Mr. MacIntyre: Oh, Mr. Robison, this answer of this witness beginning at line 8—no, the question, beginning at line 10, page 4957, does not say anything about delivered prices, except under the basing-point system—under the basing-point system; doesn't talk about any other delivered price whatever except the basing-point system delivered prices.

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Mr. Robison: The question pending doesn't include that.
Mr. Stewart: The valid objection seems to be—
Trial Examiner Norwood: Read the question.
Mr. Stewart: If you will let me state my objection before you hear the question you can pass on my objection.
Trial Examiner Norwood: No. It would be much more intelligible to hear the question to know what you are talking about.
(Question read.)
5096 Mr. Stewart: Now, the point that I make is that the witness has been very careful not to say that they would use the f.o.b. mill. That is the only thing he can think of that they would use.
Mr. MacIntyre: I am asking him why, then, he thinks that they would not use any other system than the f.o.b. mill system.
Trial Examiner Norwood: All right, no. Answer that question.
A. There is one discrepancy remaining in that question. The question has left out f.o.b. prices related to prices under the basing-point system. That was in the question which I answered, and I was, therefore, in my answer, excluded from setting up a system of f.o.b. prices which was related to delivered prices under the basing point system. That, I think, would be quite a natural system to substitute if the manufacturers were merely forbidden to use the basing-point system. They could turn to an f.o.b. system related to the basing-point system, but the question asked me excluded that also, and, as I take it now, your question does not exclude that.
Trial Examiner Norwood: Tell us why you think they would be turned to that f.o.b. system unrelated to the basing point or to the delivered—
Mr. MacIntyre: To the basing-point system.
5097 Trial Examiner Norwood: To the basing-point system, yes.
The Witness: Why they would turn to the f.o.b. policy?
Trial Examiner Norwood: Yes.
The Witness: Because that accomplishes about the same purpose as the basing-point system.
Trial Examiner Norwood: Unrelated.
The Witness: Oh, unrelated. Well, I have testified that they were unrelated. The only f.o.b. system I can conceive of as being practical is the—
Trial Examiner Norwood: Uniform—

The Witness: —uniform f.o.b. mill.

Trial Examiner Norwood: Well, now, tell us why you think that would be the only alternative.

The Witness: Well, I did tell that in the direct examination. In other words, I can't conceive of their setting up a system of f.o.b. prices which would be arbitrary and without any pattern, now one thing, now another thing, neither uniform f.o.b. nor related to delivered prices, without getting into difficulties with their customers, and being accused of discrimination, and all that.

By Mr. MacIntyre:

Q. And why would the price become uniform under such a system?

5098 Mr. Robison: I think the witness has already given the explanation.

Mr. MacIntyre: He has given an explanation, but I want others if he can give them.

Trial Examiner Norwood: Let him explain further if he can.

The Witness: I have tried to tell you why the uniform f.o.b. mill basis would be the one they would use rather than any other kind of an f.o.b. basis which was independent of delivered prices.

By Mr. MacIntyre:

Q. In that connection you have spoken about difficulties with his customers. What did you mean by that?

A. I meant that if a manufacturer had a system of f.o.b. pricing, which was neither uniform at the mill nor related to delivered prices, I can't see that he would have any kind of a pattern, and sooner or later different customers would be objecting if they had not gotten such a good price as somebody else, a situation which he is brought into because his pricing does not follow any logical pattern, and I said that I could not think of any logical pattern except those that we mentioned.

Q. And why do you, as an economist, say that a buyer would object if he found that he did not get as low a price f.o.b. mill as some other customer got?

5099 A. Well, it does not take much of an economist to understand that if two or more people buying from one seller find that there is discrimination, that one of them is getting a better price than the other, other conditions being the same, the fellow who thinks he has been discrim-

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inated against is going to be displeased. That is all I meant by that.

Q. Yes, that is what you told us two or three times.

Now, I am asking you why you, as an economist, consider that he would be displeased if he found that he was paying a higher price f.o.b. mill than somebody else was paying.

A. Well, that is based on general knowledge of human nature, such as, I should think, an economist as other people might presume to have.

Q. And that common knowledge would be a matter of expecting his self-interest to prompt him to get the very lowest price that he could get; is that correct?

A. Not quite. As I said in direct testimony, the thing that the buyer is most interested in is not getting a higher price than other buyers under similar conditions, especially if they happen to be his competitors. A dealer in rigid conduit will feel it a grievance if when he gets his conduit he finds he had had to pay more for it than some other dealer in his same market. That is far more important, I think, to him than the absolute level of the price.

Q. But consider that the buyer is one who is pur-
5100 chasing the conduit for use in his building, and not for resale. Is it, then, to his self-interest to get the lowest possible price, in fact, one lower than anyone else, that he can get rather than pay higher than anyone else?

A. Oh, there is no doubt it is always to any buyer's interest to get the lowest price he can.

Q. Lower than anybody else; isn't that correct?

A. Well, as low as he can get it.

Q. Even if it is as low as anybody else?

A. That would not disturb the buyer.

Q. In fact, he would want it and it is to his interest to get it, isn't it?

A. Now you are turning this right around to the other buyer in connection with this discrimination. You discriminate between your buyers. I have only given attention to the buyer who got the raw end of this discrimination. He is going to be displeased and protest. Now, the other buyer who got the favorable end of the discrimination I should suppose would be quite pleased, and I doubt if he would make any protest.

Q. In other words, there would be a difference there in the field; the one who got the low price would not have his self-interest curbed and detracted from so much

as the one who—I mean the higher price—as the one who paid the lower price?

A. I guess I would have to hear that again.

Mr. MacIntyre: Maybe we better strike it and
5101 start over. Strike the question.

Trial Examiner Norwood: Ten minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

Do you want the last question read?

Mr. MacIntyre: I believe we struck it out.

By Mr. MacIntyre:

Q. Well, these last questions, Doctor, involving questions of interest of the buyer, brings us back to your phrase "self-interest."

When a seller is acting in his self-interest can he also be acting in the interest of a monopoly of which he is a part?

A. He could be.

Q. And in his self-interest?

A. If he is a part of monopoly, it is doubtless to his self-interest to promote the affairs of the monopoly.

Q. And in promoting his self-interest he would be promoting the interest of the monopoly under such circumstances?

A. I would put it the other way: In promoting the interest of the monopoly he would be promoting his own interest.

Q. He would also be promoting the interest of the monopoly when he was promoting his own interest, if he is a part of the monopoly; is that right?

A. He may or may not be. A member of a monop-
5102 oly may take action which is contrary to the interest of the monopoly.

Q. But at least he would be promoting the interest of the monopoly?

A. He would under what conditions?

Q. If he were part of the monopoly and considered his interest to be the interest of the monopoly.

A. There seems to be but one answer. You have the answer in the hypothesis.

Q. Well, what is your answer, even if it is in the hypothesis.

A. Well, if a man is a member of a monopoly and it is

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to his interest to promote the interest of the monopoly, when he promotes the interest of the monopoly he is acting in his own interest.

Q. And his self interest and the interest of the monopoly of which he is a part being compatible, he is acting, when he is acting in his self-interest, in the interest of the monopoly, isn't he?

The Witness: I did not catch one word. May I hear the question again?

Trial Examiner Norwood: One word.

(Question read.)

A. That seems also to be a truism. If the interest of the monopoly and his interest are compatible, by which I take it you mean alike, then if he acts in the interest
5103 of either one of them, he also acts in the interest of the other.

Q. So in each instance where you told Mr. Moore in response to his questions that a buyer would act in his self-interest if he were acting in the interest of a monopoly, he could also be acting in the interest of the monopoly as well as in his own interest, couldn't he?

A. Well, the hypotheses back of my answer might have precluded that. If you are placing it before me, just on the basis of your assumptions—

Q. Yes.

A. —then, of course, it is possible that a person acting in his own interest might also be acting in the interest of monopoly.

But it is equally possible that his interest and the interest of the monopoly might be at variance, and in that case he might act in his own interest but contrary to the interest of the monopoly of which he is a part.

Business is full of examples of that, where members of combinations and agreements don't play ball with the rest of them, taking actions in their own interest which are adverse to the interest of the group.

Q. But would that be your answer if his action is exactly the same as the action of all other members of the monopoly?

A. Well, all I would be able to infer there was that this man was acting in his own interest.

5104 Q. And in the interest of the monopoly when he was acting as all other members of the monopoly were acting; is that correct?

A. Well, probably so. I do not feel that it absolutely follows. It is a pretty fair inference.

Q. Earlier this afternoon, Doctor, you told us how these different destinations under the basing-point system as you saw them were separate markets geographically, but probably related in price-making properties, and would have to be considered as related in price-making properties in considering and discussing matters of price competition.

A. By price-making properties do you mean mechanisms, or arrangements, something like that?

Q. I want you to explain in what manner did you consider them related. If they were not related geographically, then how are they related?

5105 A. Well, they are related geographically.

Q. In what way?

A. Well, each one is a certain number of miles from the others. There are certain freight charges between them. Those are, I take it, geographical relations.

Q. Well, do you—

A. I did not mean to say, as your question seemed to imply, that they are not related geographically.

Q. But you spoke of them as being separate geographical markets. I took that to mean—and I want you to correct me if my understanding is incorrect—that they were therefore, geographically speaking, separate markets.

A. Yes, and in other respects they are separate markets.

Q. But you did say they are related—

A. Yes.

Q. —as to these price-making properties.

Now, I want you to tell me in what manner they are related in price-making properties.

A. I would like to add that they are also related geographically. In other words, I do not say that they are separate geographically and related according to the price mechanism. They are related in various ways. And all I have said is they are separate markets.

Q. Well, now, you have said that they are related. Now I am asking you in what way are they related with

5106 respect to price-making properties?

A. Well, they are related in several ways. We have already brought out—

Q. Well, tell us the ways, as briefly as you can, in

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which they are related with respect to price-making properties.

A. That is what I am trying to do, Your Honor. As I have said, we have already stated this—

Trial Examiner Norwood: Go ahead.

A. We have already stated that under the basing-point system the prices are related to the price at a basing point. There is a relationship.

Q. Is that the relation you had in mind when you said they were related with respect to their price-making properties?

A. That is one of the relations.

Q. What others are there?

A. Other relations are that demand conditions all over the territory in which any manufacturer sells will be taken into account in determining—in shaping his price policy,—that is the demand all over in these different markets. Those various demands have to be taken into account as part of his central problem of price policy. That gives another relationship between them.

Q. Well, in considering them in that way, does your concept of the basing-point system prompt the seller treating one of these destinations differently from
5107 the other in the making of prices?

A. Well, by—if by "differently" you mean arriving at different prices, of course he does.

Q. How does he?

A. Well, the freight charges from the base point to these different places are different. That will give different prices.

Q. But how are they related in that respect, with respect to freight charges, from one of these points to another except from the basing point?

A. Well, that relationship of the freight charges goes back to each one of the basing points.

Q. But not from each other?

A. No, not from each other.

Q. So they are related, then, in price-making properties in their tie-up with the basing point.

A. That is one of the relations.

Q. I am asking you to tell me in any other way in which they are connecting in price making—that is, related in price-making properties.

A. I already have. I told you that in considering the

demand for the product the manufacturer has to consider the demands in these various markets, and that is another important element in his price-making policy, and that makes them related to each other.

5108 Q. Well, assume that the basing-point price is set by all of the sellers as Pittsburgh—or the base price Pittsburgh is set at $5 as the unit price, and that applies with freight from Pittsburgh on sales made to customers in Philadelphia and in Washington, D. C.; that at the time that that was made the demand is increasing in Washington, D. C., by declining in Philadelphia. How have those sellers in the setting of that price in that way treated Washington, D. C., and Philadelphia, Pa., as separate markets?

Mr. Robison: May I have that question read?

Trial Examiner Norwood: Read it.

(Question read.)

The Witness: I want to—

Mr. Robison: I think it should be made clear, Mr. Examiner, whether the question assumes a combination—price made by combination or whether it is addressed to the sort of situation the witness has testified to on direct examination, namely, a price set by an individual seller.

Trial Examiner Norwood: Do you object to the question?

Mr. Robison: I object to the question on that ground.

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. I was about to say that I have to protect my-

5109 self in answering this question by calling attention to certain features of your assumption which need to be clarified.

When you say the price is set by sellers, I do not want to accept that, because I do not think that prices are set by sellers. If you think that the final determination of price, that is a matter of sellers and buyers, demand and supply, working together in these different markets, that is what finally determines the price.

If by that you simply meant quotations are set, or offerings are made by the sellers, very well.

Then I would also want to be sure that you did not mean that sellers got together and set these prices, or these quotations. If all you mean is that individual sellers are making quotations, then I think I can answer your question.

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By Mr. MacIntyre:

Q. I would like for you to take the assumption that I have made, Doctor, and answer the question.

Trial Examiner Norwood: Read the question.

(Question read.)

A. I think I would interpret that language to mean that they got together and formed a combination to set the price, the way that language reads.

Trial Examiner Norwood: Well, have they treated Washington and Philadelphia as separate markets in that case?

The Witness: They have treated Washington and
5110 Philadelphia as separate markets, but they have not treated them as unrelated in their price-fixing policy. In other words—well, let me say it doesn't make much difference whether they did it by combination or separately. I can answer by either assumption.

When they set—to use the language of the hypothesis—when they set their Pittsburgh price they had in mind the demand conditions all over the market in which they sell, and they are always going to be up against the situation in which demand is going up in one place and coming down in another place, and I presume that they took account of the state of demand in not only these two places mentioned, but in perhaps a hundred other places, and on the basis of that information they determined whether to set this price, their base price, make it this, or higher or lower.

By Mr. MacIntyre:

Q. In doing that, Doctor, how did they treat Washington, D. C., and Philadelphia, Pa., as two separate markets in price making independent of each other?

A. Well, I have got to go back over that language again.

Trial Examiner Norwood: Didn't they consider the entire country as a whole as one market, that is, the entire country so far as the single price obtained in that case; disregard the separate markets and consider them as one market? Did they do that or not?

5111 The Witness: Well, of course, I don't know what they did. They may have done some foolish things, but—

Trial Examiner Norwood: Wouldn't it necessitate that consideration?

The Witness: Let me try to make very clear the distinction I have drawn between separate markets and unrelated markets.

Now, these are separate markets—

Trial Examiner Norwood: You have told us that, but in the case he stated did they consider that one market?

The Witness: No. They considered these as separate markets, for the very obvious reason that they had separate demands.

Trial Examiner Norwood: Weren't they separate markets for purposes of coordinating this price to be named in the larger market?

The Witness: Isn't this perfectly clear—

Trial Examiner Norwood: Is that true or not? Is that wrong?

The Witness: I am sorry to have seemed to be changing the language, but isn't this clear: These are separate markets. These sellers in Pittsburgh regard them as separate markets. They have got their separate sales forces in the different places. Their building conditions are entirely different, or may be. They are separate mar-
5112 kets. Now, it does not follow from that that they do not consider them both when they make their pricing policy. Neither does it follow that they consider one of them all by itself first and then consider the other one all by itself. They consider them all together with hundreds of other markets in which they are selling or offering to sell, and on the basis of that information they determine a pricing policy. That is what I have been trying to say.

By Mr. MacIntyre:

Q. Doctor, when a seller in so setting a price for Washington and Philadelphia under those circumstances named the same price as applicable to the two prices, was he then treating Philadelphia, Pa., and Washington, D. C., any differently as different markets?

A. I don't know whether you meant to change your hypothesis, Mr. MacIntyre, but in the previous question you had them setting a price in Philadelphia; now you say they set prices in Washington—I mean, first, you said setting a price at Pittsburgh; now you say they set prices

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in Philadelphia and Washington, and making the same prices.

Q. No. I still say that the price that was set was the Pittsburgh base price with the delivered price quotation in Philadelphia and in Washington being the Pittsburgh base price plus freight from Pittsburgh. I am asking you, on the basis of that assumption, and on the further
5113 assumption that the demand at the time that is done is declining in Philadelphia and increasing in Washington, has the seller in so acting treated Philadelphia and Washington differently in the making of prices for them?

The Witness: Now, will you read the question as it now stands?

Trial Examiner Norwood: Read it.

(Question read.)

A. I am permitted to assume that that is a substitute for the question that was stated just before it?

By Mr. MacIntyre:

Q. No. This is a question in and of itself, Doctor. Do not assume anything else but what is in that question.

A. That is what I meant.

Q. Yes.

A. The seller in this case, according to the hypothesis, is setting a base price, we will call it, in Pittsburgh, and by adding freight arriving at his prices in these two other places. I should prefer to call them quotations or offerings rather than setting the price.

Now, the fact that the demand is going up in one and down in the other, as in this particular instance, has not led him to treat the two differently on that account.

Q. He has not treated them differently despite the fact that the demand is going up in one and down in the
5114 other, has he?

A. No, because to do that would be a complete departure from his price pattern. He shapes that pattern not to meet the particular demands in particular different markets but to meet the whole situation with which he is dealing.

Q. In other words, he has done that despite these differences of supply and demand in those two places that are separated geographically; isn't that correct?

A. That is a correct statement.

Well, let me be sure. He has done it—he has followed

out his price policy in respect to both of these places despite the fact that the demands are different in both of those places. I would not interpret it as saying that he ignored those demands, because, as I have said, those demands entered into the whole picture which has led him to his price policy.

Q. Then, if they have entered into the whole picture, how in that respect were they considered by him as separate markets for price-making purposes for the two places?

A. Well, whether he considered them as separate markets is not the important point. I have defined them as separate markets.

Q. Yes.

A. In my opinion they are separate markets, and if he accepts my definition he will call them separate mar-
5115 kets, the reason being that they have separate demands. That is the most obvious reason. Now, all he has done is to put those separate markets in his total picture and determine his price policy.

Q. But he did not treat them separately in doing so, did he?

A. That is the same old distinction. He treated them as separate markets, but not as unrelated markets, in his pricing policy.

Mr. MacIntyre: Read that last answer, please.

Trial Examiner Norwood: Read it.

(Answer read.)

Trial Examiner Norwood: Now, in what respect did he treat them as separate markets?

The Witness: He told the salesmen to report on building conditions in these two markets. He did not tell any salesman to report on both of them as one market, but he told salesman A to report on the building conditions in this market, and he told salesman B to report on the other. He told salesman A to get in touch with the builders and contractors and architects in this market; he told salesman B to get in touch with the corresponding fellows in the other market. Now, those are separate markets. He is treating them as separate markets. When he came to frame his price policy, of which all this is a prelimi-
5116 nary part, he did not ignore the fact that those markets are related in that they were both part of the whole picture of the markets in which he is selling.

Trial Examiner Norwood: In what way did his failure

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to ignore the fact that they were not related express itself? Did it reflect itself in price in any substantial way—

The Witness: I beg your pardon?

Trial Examiner Norwood: —economic way?

The Witness: Excuse me, Your Honor. Did you say his failure to ignore that they are not related?

Mr. Robison: May I have the question read?

Trial Examiner Norwood: I think maybe—

Mr. MacIntyre: The question is clear. I would like to hear the witness' answer.

Mr. Stewart: May we hear the question read?

Trial Examiner Norwood: I just want to be sure I based it on his previous answer.

Read his previous answer.

(Answer read.)

Trial Examiner Norwood: Now, read my question.

(Question read.)

The Witness: I don't think that is what you meant to ask.

Trial Examiner Norwood: Take out the word
5117 "not," please.

The Witness: Now, the question reads—

(Question read as follows:

"In what way did his failure to ignore the fact that they were related express itself? Did it reflect itself in price in any substantial way, economic way?")

Trial Examiner Norwood: Now, you said he did not ignore the fact that they were related; that he recognizes, according to your statement, that they were related.

The Witness: Yes, and they are related.

Trial Examiner Norwood: Yes. But now in what way did his failure express itself?

The Witness: I still don't get it.

Trial Examiner Norwood: He did not recognize the fact that they are unrelated; he recognized the fact that they are related.

The Witness: Now, you are just asking me what was the consequence of his recognizing that these markets were related?

Trial Examiner Norwood: Yes.

Mr. MacIntyre: May I ask the witness a question on that?

Trial Examiner Norwood: Yes.

By Mr. MacIntyre:

5118 Q. In what way, when the seller acted in that direction, did he express that these two points were separate markets, as you claim them to be?

A. I do not quite know what you mean by "express." Do you mean did he say so, or state it?

Q. In the expression of his price, in what way did he express them to be separate markets, as you claim them to be, when he named his price.

A. The language does not mean much to me, Your Honor. He did not express anything about markets when he announced a price policy.

Q. In other words, he made no expression of difference in these two markets as being separate in his naming of a price; is that correct?

A. Excuse me, Mr. MacIntyre, if I seem to be insistent here, but what do you mean by a manufacturer expressing something about markets when he makes a price?

Trial Examiner Norwood: Economic differences finding expression in a variation of prices.

The Witness: Is that the meaning of it?

Trial Examiner Norwood: I think that is what he means.

The Witness: Well, I take it you mean in what way did these separate markets enter into his determination of a price.

5119 By Mr. MacIntyre:

Q. No; how did he express that they were to his mind separate markets in his price making?

A. I don't think he had to express that to anybody.

Q. Well, did he express that they were separate markets when he named the price for them?

A. Can you tell me what you mean by "express"? Do you mean did he announce it, or publish it, or recognize it?

Q. Through the announcement of his price.

A. Oh, you mean how do we imply that the announcement of his price is an expression of—

Q. Of them being separate markets, Doctor.

A. I think I have explained that. The announcement of his price is the announcement of the conclusion he has

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come to by taking into account all the conditions of demand and supply, of which I have mentioned some, but by no means all, and among the conditions of demand were two demands in these two separate markets.

Q. And how did his naming of a price of $5 which was to apply for Washington and $5 which he said was to apply for Philadelphia express his thought that they were separate markets?

Mr. Stewart: Now, I object, Mr. Examiner.

Trial Examiner Norwood: Objection overruled.

Mr. Stewart: Frankly, I think this subject has 5120 been more or less exhausted.

Trial Examiner Norwood: Frankly, I think the witness should make a direct answer to the counsel.

Mr. Stewart: What I want to suggest to you is this: What Mr. MacIntyre is trying to develop—

Trial Examiner Norwood: Let us find out.

Objection overruled.

I am going to ask the witness to make a direct answer.

Mr. MacIntyre: May we have the question now?

The Witness: Can I call attention to the fact that counsel—

Trial Examiner Norwood: Read that question.

The Witness: —has changed his hypothesis again?

(Question read.)

A. You see, in all of this discussion so far as we have had, we have assumed that he fixed a price in Pittsburgh, and the price—

By Mr. MacIntyre:

Q. This is the Pittsburgh base price that we are talking about, Doctor, and which applies, when freight is added therefrom, for Philadelphia, and, when freight is added therefrom, for Washington. Now, how did that express any differences in the markets, the separability of the two markets?

A. You are not asking me now about the $5 price 5121 in Philadelphia and the $5 price in Washington?

Q. It is the $5 base price Pittsburgh, which makes the price for Washington and for Philadelphia. How does that express the fact, which you claim it to be, that they

are separate markets? How does that in itself, if there is no other expression, express the fact that they are separate markets, as you claim them to be?

A. You mean how could a person, with no other information at all except the announcement of the $5 price, infer the separate conditions of demand in Philadelphia and Washington? Of course he could not.

Q. Well, how has he expressed them in the announcement of his price?

A. I have already answered that to the best of my ability. I can repeat it.

Trial Examiner Norwood: Well, answer it again?

The Witness: Shall I repeat it?

Trial Examiner Norwood: Yes.

The Witness: The demands in Philadelphia and Washington have been part of the considerations which this seller took account of in determining his price policy.

Trial Examiner Norwood: Well, now, right there, how is that evidenced?

The Witness: Well, it is not evidenced by—

Trial Examiner Norwood: The results of taking 5122 that into consideration in making a price—

The Witness: Yes.

Trial Examiner Norwood: —how is that reflected?

The Witness: Well, it is reflected in that, if these demands have been something entirely different in these two cities, he might arrive at $4.95 or $5.05.

Trial Examiner Norwood: We are assuming that they were different.

By Mr. MacIntyre:

Q. I am assuming that the demand is different, Doctor, that it is going down in Philadelphia and going up in Washington, but he named a base price in Pittsburgh, which makes the price at both places, and that price at Pittsburgh is $5. Now, how has he expressed the declining demand in Philadelphia and the increasing demand in Washington as being factors in two separate markets, as you claim them to be?

A. When I said "different," I did not mean different between these two towns. But suppose the demand con-

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ditions in these two towns had been different from what has been assumed here, the results would be—

Mr. MacIntyre: Now, if Your Honor please, I am not assuming that they are different from what I have been assuming. I am assuming them as I have stated them to be, and I am asking him to answer my question on the basis of my assumption, and not his.

5123 The Witness: I did that only, Your Honor, to avoid pure repetition of what I have already said. I thought I could make it somewhat clearer.

Trial Examiner Norwood: I wish, Doctor, that you would make a direct answer, and you can explain it later. Read the question.

(Question read.)

By Mr. MacIntyre:

Q. In his naming of that price.

A. In his naming of that price of $5 is the expression, to use the term as I think you use it, of all of the considerations that entered into his determination, including the two you have mentioned.

Q. Well, how does he evidence through the naming of that price that Philadelphia is one market and Washington is a separate market?

A. He does not evidence that. You can't tell from the announcement of one base price in Pittsburgh, about a hundred different markets, or the stages of demand in those markets, whether they are separate or not.

Trial Examiner Norwood: Well, in doing that is he treating them as two separate markets from an economic standpoint?

The Witness: Yes, he is, Your Honor, but he is treating them as part of the whole combination of factors

5124 which determine his determination of a price quotation.

Trial Examiner Norwood: In doing that doesn't he combine the two?

The Witness: Why, yes, he combines the two.

Trial Examiner Norwood: He disregards the separateness and considers them in one market?

The Witness: No, he does not disregard their separateness. As I have already said, he has to get separate reports of demand conditions in both. He can't disregard

their separateness. Otherwise we lose the hypothesis here, which is that one demand is going up and one demand is going down. Those are separate features of two separate markets. But when he gets his data, he then puts all the data into the hopper, so to speak, and grinds out his results.

Mr. MacIntyre: Off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Recess till 10 o'clock tomorrow morning. We will meet in this room.

(Whereupon, at 4:20 o'clock p. m., February 11, 1942, the hearing in the above-entitled matter was adjourned.)

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UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume III of the Printed Record, being one of 5 volumes of said Printed Record filed on May 13, 1947, in:

Cause No. 8642.

Clayton Mark & Co., *et al.*, *Petitioners*,

vs.

Federal Trade Commission, *Respondent*,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 20th day of October, A. D. 1948.

Kenneth J. Carrick,

(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*